THE

CONSPIRACY

TO DEFEAT THE

LIBERATION OF GOV. DORR;

OR THE

HUNKERS AND ALGERINES IDENTIFIED,

AND

THEIR POLICY UNVEILED;

TO WHICH IS ADDED,

A Report of the Case ex parte Dorr;

COMPRISING

MOTION TO SUPREME COURT OF THE UNITED STATES; PETITION OF SUNDRY CITIZENS OF RHODE ISLAND; AFFIDAVITS SHOWING THE TREATMENT OF GOV. DORR BY THE INSPECTORS OF THE PRISON; ARGUMENT OF COUNSEL, AND THE DECISION OF THE COURT.

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DEFEAT THE LIBERATION OF GOVERNOR DORR;

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In the fifteenth year of the reign of Charles the Second, King of England, that Monarch of his royal "will and pleasure, especial grace, certain knowledge, and mere motion," as is stated therein, granted a Charter to Benedict Arnold and others, declaring them "from time to time, and for ever hereafter, a body corporate and politic, in fact and name, by the name of The Governor and Company of the *English* Colony of Rhode Island and Providence Plantations, in New England, in America; and that, by the *same name*, they and their successors shall and may have perpetual succession," &c.

When the Constitution was framed and adopted by the United States in 1788, North Carolina and Rhode Island excepted, the State of Rhode Island had not changed its form of government, unless some change in the name may be considered as abolishing the form. The Constitution of the United States went into operation in 1789. Rhode Island, taking no part in framing or ratifying it, was treated as a foreign State, and duties were laid upon her manufactures when imported into the States of the Union.

On the 29th of May, 1790, a Convention of the State, assembled at Newport, ratified the Constitution of the United States; having drawn up and prefixed to their act of ratification, eighteen specifications of principles, or explanations, which they declared to be consistent with the Constitution, and having also annexed twenty-one articles which they proposed and recommended as amendments thereto. In the third specification of principles, declared thus to be *rights*, embodied in the Constitution, the Convention assert, "That the powers of government may be re-assumed by the people, whensoever it shall become necessary to their happiness."

For more than fifty years, the State of Rhode Island continued without any other form of State Government than such parts of the Charter as were acquiesced in by the people, although several unsuccessful attempts were, at different times, made to form a State Constitution. In the year 1840, the people of Rhode Island were engaged in an exciting discussion upon the propriety of forming for the State, a Constitution based upon the principle of free suffrage. The discussion was maintained with much zeal by the friends and foes of free suffrage, until a convention was called at Providence in November, 1841, which drafted and submitted to the people for their consideration a form of government for the State, called the People's Constitution. In the latter part of the month of December following, the People's Constitution was adopted by a large majority of the people of the State, and it is a remarkable fact in the history of this eventful time, that a majority of the freeholders were found to have voted for it, their names having been endorsed upon their ballots. In pursuance of the

provisions of this Constitution, thus formed and adopted, an election for State officers was held under it, and by a decided majority of the suffrages of the people, Thomas Wilson Dorr was elected Governor of the State.

Disregarding these repeated decisions of the people, and the revolutionary principle upon which the whole structure of our political institutions is based, "That the powers of government may be re-assumed by the people, whensoever it shall become necessary to their happiness," the minority of the people of Rhode Island, numbering perhaps one third of the legal voters, and possibly possessing two thirds of the wealth of the State, seeing themselves about to be deprived of powers which they had long assumed and abused, and reduced to a political level with their less wealthy fellow citizens, conspired to prevent the due organization and action of the new government. By imputing to the free suffrage party the design of plundering men of property, and the vaults of the banks, and violating the sanctity of families; charges which they must have known to be as false as they were audacious, the Algerines, who pretended to be the friends of "law and order," succeeded in drawing back to their ranks some timid men who had voted for the People's Constitution. A few men who had attained public stations, without possessing that persevering firmness so needful in reformers, yielding to their impulses, brought discredit upon the suffrage cause. Still, the friends of the People's Constitution would probably have triumphed over all these obstacles, but for the significant interference of the Executive branch of the government of the United States. For this manifestation of regard for the oppressor, and disregard of the rights of the oppressed, many of the friends of free suffrage were not prepared. They desired a Republican form of government, but were unwilling to fight for it, especially with that power whose sworn duty it was to guarantee it to them. Yielding to circumstances which he could no longer control, Gov. Dorr advised his friends to disperse, and then retired to another State. To use his own words, "The will of the people thus manifested was obeyed."

The submission of the people to the Algerine government, instead of bringing peace, was the signal for the infliction upon the friends of free suffrage of the most cruel indignities, and atrocious outrages; unparalleled in this country, saving under the "law and order" of the tories during the revolutionary war. Martial law abolished civil government—the state was converted into a disorderly camp—the press was silenced—the people were robbed of their arms and other property, and some of the best men in the state were dragged to prison. Women were hurried before the courts and indicted for pretended offences; but here the effrontery of the Algerines failed them, for they dared not bring the ladies to trial. Several of the most peaceful citizens were indicted for serving the people as moderators and clerks of town-meetings, and in other civil capacities. Others, and among them Gov. Dorr, were indicted for treason against the State of Rhode Island. Conscious of having committed no offence, Gov. Dorr returned to his native state, and was arrested at Providence on the 31st day of October, 1843, and taken to prison, whence in February, 1844, he was taken to Newport and arraigned before the Supreme Court of the State on a charge of treason. The *trial* upon this charge, if an examination upon such a charge before a *State* tribunal can be called a trial, resulted in a verdict of guilty, and a sentence by that Court on the 25th day of June, 1844, as follows:

"That the said Thomas W. Dorr be imprisoned in the State's Prison, at Providence, in the county of Providence, for the term of his natural life, and there kept at hard labor, in separate confinement."

When asked by the clerk if he had anything to say why sentence should not then be pronounced against him, Gov. Dorr arose, and with that dignified self-possession for which he is so remarkable, briefly and cogently vindicated his

course, and the cause in which, with his associates, in perfect accordance with the principles of the revolution of '76, he had been engaged. It was here that the character of the man was more fully developed, and exhibited in all the beauty of its consistency. This was the crowning effort of his labors in the cause of constitutional reform. It was the seal of his sincerity, and the enduring memorial of his fidelity.

The idea of perpetual incarceration in a gloomy prison, known to have been peculiarly destructive to the human mind, could not shake the fortitude of Gov. Dorr. Equally above the reach of such influences, and superior to the tribunal about to pass sentence upon him, he reminded the court, in duty to himself, that he had not had a fair trial—that the place was justly exceptionable, if not unlawful; the jury selected, not for their impartiality, but for their partisan hostility, and the case not permitted to be fully presented to them. That the jury were not permitted to judge of the law, nor to have it argued to them, nor to hear evidence in justification of the acts of the defendant. That several of the jurors had prejudged the case, and used violent and revengeful expressions against him. That the court, "*in the hurry of this trial*," refused to hear the law argued to themselves; to permit the defendant to prove the Constitution, or his election under it, or to repel charges of malicious motives. That this was a political trial, to gratify an insatiable spirit of revenge, and cut off his social and political existence. That although the sentence of the court in condemning the acts of the defendant, will also condemn the principles upon which the Republic is based, yet it cannot "*reach the man within.*" It cannot affect the impartial judgment of his fellow citizens, nor deprive him of their affectionate respect. Much less can it prevent them from reversing all the wrongs now committed.

"From this sentence of the Court," said Gov. Dorr, in conclusion, "I appeal to the people of our State, and of our country. They shall decide between us. I commit myself without distrust to their final award. I have nothing more to say."

The sentence of imprisonment for life was then pronounced by the Court, when Mr. Atwell read and offered a bill of exceptions for a writ of error from the Supreme Court of the United States, against the ruling of the Court, "That treason might be committed against a separate State." The Court ordered the bill to be entered on the minute book, and it makes a part of the record. "Mr. Atwell then moved the Court to suspend the execution of the sentence in order to await the decision of the case, by the Supreme Court of the United States, upon a writ of error. The defendant," he said, "by the imprisonment which the sentence imposed, would be disabled from prosecuting his suit." The Court refused this request, remanded the defendant to prison, and adjourned for the term. Two days afterwards, on the 27th of June, Gov. Dorr was privately conveyed from Newport jail to the State Prison at Providence. Mr. Atwell and Mr. Turner, his *responsible* counsel, were at Newport at that time, but the removal was purposely concealed from them. Mr. Walter S. Burgess, who has since disclaimed responsibility as the counsel of Gov. Dorr, was *permitted* to accompany him in this hurried removal to the State Prison, under a *pledge of secrecy*, binding him to *conceal* the movement even from Messrs. Atwell and Turner, who *were* the responsible counsel. Having left Gov. Dorr at the door of the State Prison, Mr. Burgess was thereafter denied all access to him, and treated by the Algerine Inspectors with as much indignity as though he had been one of the *responsible* counsel of the Governor, or had been faithless to his pledge to conceal the disgraceful and stealthy act of incarceration. These circumstances were not all known abroad when the appeal of Gov. Dorr was sent forth to the people of the Union. The

press in Rhode Island was then far from being free, and many facts in the case were suppressed or misrepresented. But an American citizen had been doomed to civil death, for an alleged offence hitherto unknown in our Union—treason against a separate State, and had appealed to his fellow citizens against an illegal, an unjust trial and sentence. How were they to respond to this appeal?

Some diversity of opinion upon this point was to be expected. Political action at the ballot-boxes; a counter appeal to Judge Lynch for summary proceedings; and an appeal by writ of error to the Supreme Court of the United States—were the remedies proposed. The former mode of operation was very generally approved, and resorted to. The latter was proposed by a few, but opposed generally by those who laid claim to more than ordinary sensibility upon the subject of State rights, and by a large proportion of the legal profession. Although those who talked about Judge Lynch, probably never meditated any other than a contingent and very *remote* resort to violence, and perhaps none at all, the Algerine authorities seemed to be more apprehensive of danger from this class of reformers than from both of the others.

Having robbed the friends of free suffrage, men and women, of their arms, the Algerines, by the aid of the terrors of martial law impending, felt confident of an easy victory at the ballot-boxes in Rhode Island. Nor were they much less confident of their power to prevent the case from going up to the Supreme Court of the United States by writ of error. This they had resolved upon, and they played most foully to accomplish it. They said the case should never go up to that court, if the authorities of Rhode Island could prevent it. They had flown high for legal advice. As high, perhaps, as counsel *off* the bench or *on* the bench would allow them to go, either for money or love of "law and order." They said that Dorr should neither be permitted to see his counsel, nor sign, nor *see*, a petition for a writ of error!

Did the *authorities* hurry Dorr from Newport and pledge Burgess to conceal the stealthy flight from Mr. Atwell, who was there attending as a member, the session of the legislature, for the purpose of depriving Dorr of the aid of his counsel in preparing his petition for a writ of error? Was this done to prevent Dorr from seeing his counsel, or from signing or *seeing* a petition for a writ of error? If so, it was a conspiracy! A conspiracy against Dorr, who, although by a fiction of law, is said to be civilly dead, still has rights, which may not be wrested from him with impunity. Did the *authorities* at Providence participate in this scientific, not to say artful movement? May be they had no previous notice of it. They were ready to shut Dorr up in his cell when he came, and then turn around and spit contempt upon Burgess who had come with him. They have enough to answer for in the next paragraph.

A conspiracy is a combination of men for an evil purpose. The Inspectors of the State Prison at Providence combined to prevent Dorr from seeing counsel, and from seeing or signing a petition for a writ of error. This was a conspiracy. Conspiracies are various in kind and character, and differ in degree of legal and moral criminality. Whatever may be the consequences in a legal procedure, of combining to deprive a man of his day to defend life or liberty in a court to which the Supreme law of the land gives him the right of appeal, there can be no question of the enormous moral turpitude of such an act. No man can justify it. Dorr had this right, and all the authorities of Rhode Island knew that he desired and intended to exercise it. The Supreme Court knew it, and allowed *one day*, to prepare a bill of exceptions for that purpose. They were reminded of it again the next day, by Mr. Atwell's motion to suspend the execution of the sentence, and await the decision of the case by the Supreme Court of the United States, which motion they overruled, and Dorr was hurried off to the

State Prison; as the authorities of R. I. say, civilly dead. Was Dorr civilly dead, while he had the right of appeal to a court which had power to reverse this sentence, and declare him innocent of the alleged crime? Can the Court be justified in offering the slightest impediment to the exercise of that right? Nay, more. Were they not bound in duty, by oath, and by the constitution and laws of the United States, to *aid* him in *making* his appeal, at least so far as to allow a reasonable time for the preparation of papers, and then to allow the writ of error, and see that the Chief Justice signed the usual citations to the Governor and Attorney General of the State? A writ of error in such a case, is a writ of right. The constitution and laws of the Union recognize this right. It was as much the duty of the Supreme Court of Rhode Island, to allow the writ of error and issue the citations, as it was the duty of the Supreme Court of the United States, or either of the Justices thereof, to allow and issue those precepts. This question may yet prove to be one of serious import to the Supreme Court of Rhode Island, unless the judges thereof can make it appear that they are absolved from, or have never taken the oath, to support the constitution and laws of the United States as the *supreme* law of the land, "anything in the constitution and laws of *any* State to the contrary notwithstanding." The question may at any time arise, upon a motion for a writ of *habeas corpus*, and a stay of proceedings on the judgment.

By the act of the State of Rhode Island relative to the officers and discipline of the State Prison, the oversight and control of the prison is vested in a board of seven inspectors appointed annually by the General Assembly, who are authorized to make all necessary rules and regulations for the internal police of the prison: *provided the same are not inconsistent with law;* which rules, &c., are to be entered in a book kept for the purpose, and a copy thereof given to the Warden and other officers of said prison. One of said board shall, at least once in every week, visit each prisoner, and in the absence of the warden and underkeepers, examine into his situation, *hear any complaints that he may make*, see that the rules be strictly observed, and keep a record of all their meetings, weekly visits, and complaints made to them by prisoners, whether well or ill-founded. The board of inspectors shall have full power over all prisoners, to enlarge their confinement, permitting more than one person to remain in a cell; to have a nurse in sickness; to go into the yard in the day-time; admitting such communication to and from their friends, and among themselves, and such books and other articles as they may deem expedient, &c.

The warden of the prison shall keep a journal, in which he shall enter "all complaints that are made to him by the convicts," all punishments, &c., and visits of the inspectors and physicians. He shall see that the rules of the prison are strictly obeyed.

It should be borne in mind, that the laws of the land are also the rules and regulations of the prison, as much as though they had been re-enacted by the inspectors and copied into the warden's journal. The inspectors, in making rules and regulations, are restricted to such as are not inconsistent with law. The law of the land authorizes Gov. Dorr, by himself or by his counsel, to carry his case by writ of error to the Supreme Court of the United States for revision, and certainly to see and consult with his counsel in the case. The inspectors of the prison individually and collectively, by depriving Gov. Dorr of his right of appeal, have violated not only their prison regulations, but the laws of their State and of the United States. By combining together for the perversion or obstruction of justice, or the due administration of the laws, the inspectors have been guilty of a conspiracy; an offence indictable at common law. To conspire to pervert justice and equity has, in all ages, under all circumstances, been deemed a heinous offence. What then shall be said when the conspirators are pub-

lic officers, appointed by the General Assembly of a State? Magistrates authorized to make and execute laws; to appoint officers and administer oaths to those officers to enforce the laws! What an aggravation! But this is not all. Who is the victim of the conspiracy? A man at liberty, able to defend himself, provided with faithful counsel and means to pay them? Alas! Would to God it were so. If the conspirators are to be credited the victim is a dead man. Civilly dead! A fiction in law; a legal nonentity. A man who once had counsel, responsible and irresponsible, one of whom followed him to the narrow house of his civil interment, and afterwards refused to have part or lot in the resurrection of his friend, because of the conspiracy of the seven magistrates aforesaid! This is not the first time that Gov. Dorr has suffered severely from the neglect, and pusillanimous abandonment of his cause by his professed friends. It is impossible, in referring to the public acts of the inspectors of the State Prison at Providence, to treat them with that respect which it is desirable to cherish for the public officers of a State of this Union. They have chosen their course, and must meet the consequences. They appear to doubt the truth of their own declarations, and fear that their victim will not stay civilly dead. That, like the ghost of Banquo, he will uncivilly rise, with the murder upon his brow, and push them from their stools. Or like Falstaff, that Percy will rise from the dead, and prove a better counterfeit than himself.

The late counsel of Gov. Dorr, too, must meet the consequences of the course they have elected to pursue. When their client was hurried to prison, their duty was plainly indicated by his last act; an attempt to get his case revised by the Supreme Court of the United States. Thwarted in this, he made his appeal to the people of his state and country, and they have responded to that appeal; in various modes, it is true, for variously have they interpreted his appeal.

The National Reform Association of New York, seeing a man whom they believed to be not only unstained by crime, but one of the purest and best men in the land, incarcerated for life in the once hospitable region of Roger Williams, employed counsel to go to Rhode Island, and collect the facts of the case, with a view to send it by writ of error for revision, to the Supreme Court of the United States. This was their favorite mode of responding to Dorr's appeal. Indeed it was, in their view, the only way to secure justice to all parties concerned, and ensure a permanent settlement of all the questions that had arisen in the controversy, without a resort to violence.

Their counsel found in existence in Rhode Island a most singular state of affairs, even among the professed friends of Gov. Dorr, and made due report thereof to the Society. His first brief note of the 27th July, 1844, stated that the case stood well for a writ of error to the Supreme Court of the United States. Strange as it may seem, this position was generally doubted there, even by the friends of free suffrage. More than doubted—it was believed to be untrue; a paradox. And this doctrine, that the case could not be carried up, was taught by the members of the legal profession generally, almost without exception. Gov. Dorr and his counsel had taken the ground of appeal by writ of error, in his defence before the Supreme Court of Rhode Island. And yet his counsel, after his incarceration, expressed strong doubts of being able to remove the case from Rhode Island. One of them said openly that he had no hope of being able to get the case up, unless the authorities of Rhode Island would consent to it, and the inspectors of the prison would permit the counsel to go in and consult with Gov. Dorr. That in case the inspectors should refuse such permission, he and his associates would abandon the case. The inspectors did refuse such permission, and he abandoned the case accordingly, and

gave notice thereof to the counsel of the National Reform Association (See Mr. Treadwell's affidavit, p. 28.)

To hear from the Algerines the doctrine that their state was too sovereign to admit of an appeal from their highest court upon even a constitutional question, and that their authorities would never allow such an appeal to be made, was no novelty. But to hear that doctrine from the professed friends of free suffrage; from intelligent politicians, claiming great, nay, almost exclusive respect for the doctrine of "state rights;" from grave counsellors at law; more especially from one of the counsel of Gov. Dorr, was a heresy, which, from that quarter, was regarded with no little surprise. The counsel of the National Reform Association did not fail to notice the tendency and effect of such a development. That individual, in accordance with the desire of the association which employed him, advised the friends of free suffrage in Rhode Island to make a statement of their wrongs, and publish it, with an appeal to their friends in other states, for such pecuniary aid as might be needful to enable them to obtain redress. Not seconded in this matter by their friends in R. I. and finding that the counsel of Gov. Dorr maintained a position not entirely free from ambiguity, the Association relaxed its efforts to carry up the case, leaving their counsel free to act with the people of Rhode Island, as circumstances might require. An opportunity soon presented itself. The notice of Mr. Burgess that he had abandoned the case came very near the time of holding the great Mass Meeting on the 4th of September, and while the preparations for that meeting were the absorbing subject of thought and action. On the evening of the 5th Sept. at a special meeting called at the house of Doctor Davis, the "Banner Cottage," for the purpose, a proposition was made to the Benevolent Free Suffrage Society by the counsel of the N. R. Association, to carry up the case of Gov. Dorr by writ of error, and to provide necessary means. The proposition was not accepted. At the desire of many persons present, a meeting was called the next evening at the house of Mr. Henry Lord, and Mr Treadwell was invited to attend, and explain the mode of proceeding with the case, and to repeat his proposition. A large meeting was in attendance. Having repeated the notice from Mr. Burgess of his having abandoned the case, and stated the mode of proceeding for a writ of error, and other circumstances as detailed on the evening previous, an appeal was made to Mr. Treadwell to know if anything could be done in the matter, now that the case had been abandoned by Gov. Dorr's counsel. He replied yes. That the only real obstacle in the case was now removed. Before they abandoned the case, one of them, Mr. Burgess, had been repeatedly reminded that as counsel for Gov. Dorr, he could apply by petition to Judge Story for a writ of error as well without as with an interview, with Gov. Dorr; but he replied as often, that Judge Story was as great an Algerine as any in Rhode Island, and that he would not apply to him, for that he knew it would be in vain.

In reply to inquiries made at this meeting, Mr. Treadwell stated that the mode of proceeding for a writ of error was by petition from Gov. Dorr to Judge Story, the Circuit Judge, or to the court of which he was an associate justice. That since Gov. Dorr was not permitted to petition in person, nor to see his counsel, his counsel could sign the petition in his behalf, and it would undoubtedly be as effectual in procuring the writ of error. That as his counsel refused to do this, the signature of Gov. Dorr's father to such petition, and a power of attorney from him, was the step next to be recommended. If this should fail, let the next nearest relatives authorize the procedure, then the intimate friends in Providence, and next in succession the friends of Gov. Dorr in any part of Rhode Island. If all these sources should fail in succession, Mr. T. said he felt assured that persons from other States would institute pro-

ceedings as best they might; and under the severe hardship of the case, till now unheard of in civilized society, an entire exclusion of counsel from a man who has the right of appeal to a tribunal fully empowered to revise his case, reverse his sentence, and establish his innocence, such interposition ought to be, and probably would be, recognized by a court, having jurisdiction of all cases in law and *equity* arising under the Constitution. The meeting fully concurred in these suggestions. Acting thereon, several persons present took means to ascertain the views of Gov. Dorr's father and near relatives upon the subject. Finding that neither father nor relatives could be enlisted in an application for a writ of error, these and other individuals, citizens of Providence, united in employing Mr. Treadwell as their counsel, with liberty to employ such other counsel as he might desire to have associated with him in the defence of the suit. To these individuals, the idea of abandoning the case of Gov. Dorr wholly to persons from other states, was too revolting to be endured for a moment. They resolved—that if father and mother, as his counsel had done, should abandon his case, or should petition his persecutors for a pardon on any terms, however disgraceful, and fatal to his future fame,—they would joyfully respond to his appeal, and take up his case where he left it, when the Algerines, having induced one of his counsel to join them in concealing the movement from the other two, hurried him to the State Prison two days before the time, as understood by Messrs. Atwell and Turner. The men who stood by Gov. Dorr on Acote's hill, until they received his orders to disband and disperse, now encouraged their wives, children, and female friends, to form a society for the liberation of their faithful and beloved chief. Such was the origin of the Dorr Liberation Society of Rhode Island, which sprung from this meeting. At first it was organized by females. Mrs. A. H. Lord was chosen President, and Miss L. J. Follet, Secretary. Shortly afterwards, both male and female members were admitted. Mrs. B. Davis was chosen Vice President, Miss M. J. Dinsmore, Cor. Sec., and Mr. Wilbour Wheaton, Treasurer, Mr. Stephen C. Kenyon, Surety. Its objects, as stated in the Constitution, are,

First By legal, constitutional and peaceful means, to effectuate the liberation of Thomas Wilson Dorr.

Second—To re-assert and establish the People's Constitution.

Third—To induce the People of this State and Nation, to make themselves acquainted with the principles of the Constitution of the United States, and to "preserve, protect, and defend" the same.

The following were the first

PROCEEDINGS.

At a meeting of the Dorr Liberation Society, held at the residence of Mrs. A. H. Lord, for the purpose of forming a Constitution, and for the choice of Officers, a committee of three, appointed for the purpose, reported the annexed Constitution, which was unanimously adopted.

Mrs. A. H. Lord was chosen President, and Miss Louisa J. Follet, Recording Secretary.

The following preamble and resolutions were unanimously adopted:

Whereas certain citizens of Rhode Island have employed Gen. Samuel Fessenden, and Francis C. Treadwell, of the city of Portland, in the State of Maine, Counsellors at Law, to carry the case of the *State of Rhode Island* vs. *Thomas W. Dorr*, by writ of error to the Supreme Court of the United States, and believing that course to be the only mode of establishing judicially, the principles of the People's Constitution, and the innocence of Gov. Dorr:

Be it Resolved, By the Dorr Liberation Society, that an appeal be made to the people of the United States, for their sympathy in the cause of Free Suffrage, and for pecuniary aid in continuing the defence of this suit.

Resolved, That twelve thousand shares, or certificates of ten cents each, of contributions to the fund, to be raised for the purpose of defraying the expenses of the defence of this

suit, in the manner aforesaid, be immediately issued; that the President of this Society be directed to prepare a suitable form and device, and issue the same forthwith, for the purpose of raising, as soon as may be, the amount of twelve hundred dollars thereon.

Resolved, That the Dorr Liberation Society accept the offer of F. C. Treadwell, to furnish at the cost of printing them, any number of copies of the little book, entitled, "Treason Defined," containing, besides a definition of treason, a copy of the Declaration of Independence, and a copy of the Constitution of the United States, and offer them for sale at the following prices: $30 00 per thousand, $4 00 per hundred, 6 cents per single copy; terms cash on delivery.

Auxiliary Societies, booksellers, and other persons, may be supplied, on application to the President of the Society, at her residence in Dean street, near Fountain street.

The Dorr Liberation Society of Rhode Island, thus constituted, immediately set about a vigorous prosecution of its objects. The first thing to be done was to obtain a copy of the record of the trial, from the clerk of the Supreme Court at Newport. On repairing thither early in September, the Counsel of the Society learned that the record had not then been made up. It was written in part in two books of minutes, but mostly upon detached papers, some of which, the clerk said, were not then in the office. [See Mr. Treadwell's affidavit.] The individuals composing the Society, both before and after its formation, exerted themselves to collect money to defray its expenses. The greater part of the contributions, which in amount were considerable, came from the pockets of the members.

That the Algerines would be opposed to the course of the Society was to be expected. From the real, or from the pretended friends of Dorr and free suffrage, no opposition could have been anticipated. But an opposition arose from one of these classes, first by cautious intimations, artful insinuations, and insidious inuendoes. As these means failed of their intended effect, a more bold course was pursued, until it became as systematic, virulent and reckless, as it was senseless—as bitter and blind as the persecution of the Algerines, and wanting nothing but the power, to render it as formidable. And why? Because the Dorr Liberation Society had resolved that the case of Gov. Dorr should go by writ of error to the Supreme Court of the United States, at the then approaching term, and were taking efficient means to accomplish their purpose. Strange as these facts may appear to the friends of Dorr and free suffrage in other States, they are nevertheless true.

When, in July, 1844, the Counsel of the National Reform Association went to Providence, the great body of the people, the friends* of Dorr as well as the Algerines, declared that the case could not be taken up for revision. That there was in fact no appeal from the Supreme Court of Rhode Island in the case of the State against one of its citizens, upon a constitutional question. And this was called the "State Rights" doctrine. It was taught and assented to, if not believed, by the Algerines; taught by the lawyers of both parties, and generally believed, and almost, or quite, universally *feared* to be true, by the Dorr men. It was even said, by Walter S. Burgess, and other professed Dorr men, that Gov. Dorr himself was of the same opinion, and had no confidence in being able to carry up his case by writ of error. That Gov. Dorr had an agency in revising the State laws, particularly in that relating to State treason.† When told that the case could be carried up, and referred to the beaten track of judicial decisions upon constitutional questions of analogous character, the great body of the friends of Dorr heard the news with gladness and joy. But they had many doubts upon the subject until they knew that the writ of error was allowed, and the Supreme Court of Rhode Island had been cited to send up its record, duly authenticated, for revision.

* B. F. Hallet, among the number.

† Letter of F. C. T., July 31:

Exceptions to this joy and gladness were not wanting among the *professed* friends of Gov. Dorr. To a few such, the annunciation was as wormwood and gall. It seemed clear that they did not desire the case should go up at all, and were exceedingly anxious that it should not go up at the next term. If at *that* term a decision should be made, their fears amounted almost to assurance, that it would be against *them*. And truly it might be against them, although in favor of Gov. Dorr, and the People. It has long been the misfortune of this gentleman, to suffer severely from the acts of his professed friends. When the cartridge-box was appealed to, these friends were neither killed nor wounded, but among the missing, and some of them threatening to join the ranks of the Algerines. When the ballot-box was appealed to, their ballots were missing, at least from the free suffrage boxes. If cast at all, they must have been cast for the Algerines. *It might, perhaps, be easy to point them out and check their names, if one had a list of the applicants for office to the coming administration.* If Dorr's case had gone up, and been decided in his favor at the present term, as doubtless it would have been in case his counsel had been desirous to forward it, Dorr might have been called upon by Mr. Polk and his friends for certificates of character, political, physical and moral. In such case, some who, while Dorr is in prison, may consider their chance of success very fair, would be sure to be rejected, if he should be called upon to state to whom he alluded in his defence before the Court, when he said they hesitated to employ the ballot-box "at the vitally important election in 1843, as they had before hesitated to employ the cartridge-box, when force had become indispensable to the safety of their cause." (Trial of Dorr, p. 77.) It might then be seen who among the applicants for office had cowered under the frowns of the Algerines; who by their timidity in the performance of their duty, or their treacherous abandonment of Dorr and his cause, had driven him into exile, and pierced his heart with many sorrows. If Dorr were at liberty, such men, with all their ambidexterity, would not be able to deceive him or his faithful friends who have the appointing power. A puss in boots, a cat in old Harry's kitchen without claws, would stand as good a chance in a scramble for scraps and sprats, as a cow-boy or a faithless Dorr man for an office under the administration of James K. Polk.

The Democratic State Central Committee issued their bull against the Dorr Liberation Society, and sought to deprive them of the power of obtaining means to carry up the suit. Individually and collectively, with a few exceptions, the members of that committee resorted to the most discreditable means to crush the efforts of the Society to liberate Gov. Dorr: means equally inconsistent with the characters of gentlemen, friends of humanity and free suffrage. Several members of that committee had long taught the doctrine that the case of Gov. Dorr could not be carried up for revision. Prophets upon a small scale, having prophesied disaster and defeat to the Dorr men, sought to fulfil their own predictions by proscription and dismay. Some good friends of Dorr at Newport had collected one hundred dollars, and sent it directed to the Dorr Liberation Society at Providence. The messenger fell in with the Hunkers of the State Central Committee, and their cronies, who, by artful falsehood, persuaded him to carry the money back with him to Newport. This was at the time an annoyance to the Society, but the triumph of the miscreants was short-lived. The good men of Newport, one of whom was a member of the State Central Committee, though not in the confidence of the Hunkers, nor warned to attend their meetings, made due inquiry, and sent back the money with interest, and a notice that they should ferret out the Hunkerism which had annoyed them so much, and try to discover the "*connecting link*" between the *Hunkers* and the *Algerines!* The Newport Dorr men, true to the principles of their beloved

chief, formed a Dorr Liberation Society, auxiliary to the Society at Providence, and rendered efficient service in the cause, in word and deed; in contributions of money; and what was not less valuable in developing the villany, the hypocrisy, and the treachery of the Hunkers.

Before the Dorr Liberation Society was organized, the persons who formed it had resolved to appeal to the people abroad to contribute in small sums the needful means to pay the expenses of the further defence of the suit. About the middle of August, it was decided to publish small books, containing the Declaration of Independence, the Constitution of the United States, and a short definition of Treason, entitled "Treason Defined," and sell them at ten cents each. The work was stereotyped, and the cost of the books each would be so small as to yield at that price a large profit, which was to be regarded rather in the light of a donation than as the value of the book. Yet there was substantial value in the book; in a pocket copy of the Declaration of Independence, and Constitution of the United States, if there was none in the article upon Treason. It was deemed, too, a good deed, and well-timed, to endeavor at so little cost, to diffuse a knowledge of the Constitution, and promote a discussion of it in connexion with the subject of Treason, by putting it in the power of every one to carry the book in his pocket, and if possible, get it introduced into schools. One member of the State Central Committee subscribed for 100 copies of the book in August, on a paper being up in the office of the Republican Herald where the committee usually held their meetings. Other members of the committee were made acquainted with the objects of the publication, and if *they* did not seek to defeat them, many persons usually acting in concert with them, did, particularly the intimate friends of Walter S. Burgess. Their opposition was made both to the object, the appeal by writ of error, and to the collection of means to sustain it. This opposition of the State Central Committee and their clique, who had never been guilty of sustaining the cause by resorting to the cartridge-box, was now openly manifested, although some degree of disguise was occasionally deemed expedient. Finding that the feeling in favor of the writ of error in Dorr's case, was too strong to be crushed, however it might, by intrigue and insolence, be repressed, the clique sought to divert this feeling, and turn it in another direction. An opportunity to do it was now discovered.

Martin Luther had been convicted of the crime against Algerine "law and order," of presiding as Moderator at a town meeting, and sentenced to imprisonment six months, and to pay a fine of five hundred dollars. At a meeting at the Franklin Hall on the 20th Sept., 1844, it was decided that a scrip, or Liberty Stock, in sums of ten cents, be issued by the State Central Committee, to raise means to pay Luther's fine, and bring him out to influence the elections then pending. The object, so far as respected the elections, and Luther, was good and praiseworthy, and the means, under the circumstances, laudable also. Luther had been faithful to Dorr, and the People's Constitution. Like Dorr he had gone to prison, and, if need be, was ready to suffer death for the cause of truth. His term of imprisonment had expired before the meeting was called together, and although he had a family anxious for his return, not a murmur escaped from his lips, or was heard from his family. It was a singular fact that Luther's term of imprisonment was suffered to expire without an effort on the part of this clique of office-seekers, who knew he was unable to pay his fine, to relieve him. Luther had a case in the Circuit Court of the United States in Rhode Island, which involved the validity of the People's Constitution, and the points of law having been, pro formâ, ruled against him, his counsel, B. F. Hallet, Esq., had taken steps, or was about to take them, to carry up the case

to the Supreme Court, at Washington. To deliver a man like Luther from prison, and to provide him with ample means to pay liberal fees to his counsel, was a judicious movement, and would not have been unworthy of Mr. Hallet, if the plan had originated with him. When sympathy for Luther was so fully aroused, how did it happen that no means were proposed to carry up Dorr's case for revision? Dorr was sentenced for life. Luther for six months. Dorr had been as faithful to the People's Constitution as Luther, and was in every respect as worthy of public consideration. How then did it happen that no means were proposed at that meeting to liberate Dorr, by carrying up *his* case, as well as Luther's? Was Dorr forgotten at the meeting? No: Mr. Hallet *talked* about him most eloquently! So eloquently as to arouse the clerk of the Algerine Court from his slumbers in the orchestra. If the clerk did not respond amen! to Mr. Hallet's appeals, the Hunkers of the committee did, which shows they could not have wholly forgotten Dorr. Why then did they not take measures to carry up his case? The reason is obvious. They did not desire to have it go up at all; or if at all, not at the then next term of Court. The reason has been given before. It might be fatal to their schemes of office-begging, and expose their duplicity, their faithless desertion of Dorr's principles.

The doctrines of the Hunkers, though not made for the occasion, were seized upon for the occasion. They taught that the case of Dorr could not be carried up, because it was the suit of a State against an individual. That there was no appeal, by writ of error or otherwise, from the Supreme Court of a State. Mr. Hallet himself had taught the same doctrine about a month before, and probably adhered to it then. He said emphatically, that the case of Dorr *could not* be taken to the Supreme Court of the United States, for the reason above stated; and when told that this case *could* go up, and *how* it could go up, and was referred to authorities, to decisions of the Supreme Court in the cases of *Cohens* v. *Virginia*, and *Martin* v. *Hunter*, he petulantly replied, that the case of Dorr could *not* be *got* up to the Supreme Court of the United States in any manner.

Whether these opinions were or were not the means of recommending Mr. Hallet as a suitable person to take charge of the application for a writ of error, doth not appear. If such was the fact, how sadly disappointed must the Hunkers have been, when they found his application to the Supreme Court for a writ of error in this very Dorr case, successful. And yet this heresy, that upon a judgment or decree in any suit in the highest Court of a State, where is drawn in question the validity of a State act on the ground of its being repugnant to the constitution or laws of the United States, and the decision is in favor of such its validity, cannot be re-examined and affirmed or *reversed* by the Supreme Court of the United States, was taught by the Hunkers as the genuine "*State Rights*" doctrine, and endorsed, as they said, by all their lawyers. Nay, more. By Gov. Dorr himself! That gentleman had, to be sure, in his defence, taken the ground, that the Treason Act of Rhode Island was repugnant to the Constitution of the United States, and hence void. That the People's Constitution was duly ratified, and hence justified him in all his acts under it. These points clearly appear upon the record. The first point was supported by Mr. Turner and by Gov. Dorr; by the latter gentleman with great eloquence and ability. The other point was overruled, but it is clearly set down upon the record. Gov. Dorr himself made this defence, and put forth all the energy of his mind to sustain it by argument. Up to the time of his incarceration, he struggled to have it placed conspicuously upon the record, and there it stands, an imperishable memento of his legal science. But this, the Hunkers say, is all bagatelle. That Gov. Dorr himself does not believe in it, has no confidence in it, and "*don't mean anything by it.*" "He only *says* so; he does not *mean* so." That this defence is only a ruse, to perplex the Algerines. That Gov. Dorr does not

wish to have the case carried to Washington, and never intended to have it taken there. That it might take five years to get a decision upon the case, and operate to the prejudice of Gov. Dorr in obtaining a *pardon* from the Legislature of the State of Rhode Island.

And this doctrine, be it repeated, duplicity and all, these wiseacres say, is to be taken as the pure "State Rights" doctrine, and the teachers of it are to be taken and deemed to be "State Rights" men, par excellence! Worse than all that, Governor Dorr, they say, is a "State Rights" man, of this stamp! As if great national rights, and still greater individual rights, the rights of life and liberty, were all merged in two words, "State Rights;" which, as a cant phrase, have become a cloak to conceal and justify the practice of every enormity.

The Hunkers are not alone in maintaining these doctrines. The great body of the Algerines maintain them also. Dorr and the great body of free suffrage men and women, have resisted them with unwavering constancy, for five years at least. The Dorr men go for securing to the States, all the rights of the States, and no more. For securing to the Nation all the rights of the Nation, and no more. For securing to individuals, all the rights of individuals, and, except by force, will submit to nothing short of such security, whether demanded by the old "Law and Order" Algerines, or by the new patent "State Rights" Hunker Algerines.

Between these two parties, there are some differences, important to themselves, but not very important to the great body of free suffrage people, who vastly outnumber both of the Algerine factions—as will be fully proved whenever Dorr shall come out and unite them. These differences of the Algerines are differences, not of principle, for the principles of both are identical;—but of position. The "Law and Order" Algerines are in power, and bask in its benefits. The Hunker Algerines are striving to oust their "Law and Order" brethren, and seize upon the spoils of office. The "Law and Order" Algerines want to keep Dorr grinding in the cells, and so do the Hunker Algerines, at least till the offices are filled under the new administration. The "Law and Order" Algerines are opposed to carrying up the case of Dorr by writ of error, and so are the Hunker Algerines. The "Law and Order" Algerines are at war with the Dorr Liberation Society, and so are the Hunker Algerines. In this latter particular, the Hunkers have practised to the full the villany so long taught by their examples, if they have not "bettered the instruction."

The "Law and Order" Algerines, when forced by the distant thunders of public opinion, pealing upon their madness in conspiring against Dorr's right of appeal by writ of error, call in Burgess, who, faithful to his pledge to conceal the atrocious act of removing Dorr to the State Prison, from Messrs. Atwell and Turner, and faithless to his client in abandoning his cause, because the Inspectors refused him admission to the cell of Dorr afterwards, again becomes the confidential, if not the irresponsible counsellor of the oft betrayed Dorr. And in all this, the Hunkers entirely concur with their prototypes, the "Law and Order" Algerines. Both divisions of the Algerine army agree that the case shall not go up, if both combined can prevent it, by the destruction of the Dorr Liberation Society. But when both are forced to yield to the inflexible perseverance of that little band of Dorrite men and women, both unite as cordially as did Pilate and Herod, in recalling Burgess to resume his functions; whether of responsibility, or of *ir*-responsibility, doth not yet very clearly appear. Both parties of Algerines agree that Dorr's cause shall be committed to a man who says that neither himself nor his client has any faith in his defence! To a man who openly said, that carrying the case up by writ of error might operate to Dorr's prejudice in obtaining a pardon! Verily Governor Dorr is

in the hands of the Algerines; the combined "Law and Order"—Hunker Algerines, and if they have not selected a suitable counsellor for him, it must be admitted that they have made a very appropriate selection to represent themselves.

The Dorr Liberation Society, finding Dorr's cause deserted by Burgess and the Hunkers, persevered in their efforts to sustain it, and issued certificates of contributions to the fund for that purpose, according to the resolutions hereinbefore given (page 10). Until now, the Society had been composed of females only, to calm the perturbed spirits of the Algerines, by assurances that none but peaceful means were contemplated; and also to give them all the assurance that woman's devotion and a mother's love could afford, that it would not be in the power of faithless, treacherous man, to turn them from their purpose, by betraying afresh the suffering victim. A new set of missionaries all at once sprung up in the interest of one or the other division of the Algerines, in the shape of a sort of "Cowboys,"* who went to the ladies, and by a species of flattery, accompanied by coaxing, teasing, insinuating, menacing remonstrance, endeavored to intimidate and drive them to abandon their cause, and cease to issue their certificates of contributions, and recal such as had been issued. The rallying questions of the ladies about cartridge-box, ballot-box, and possibly sauce-box adventures and misadventures, deeds done and *feared* to be done, silenced the "Cowboys," and drove them, like lacerated hounds and snarling curs, back to their kennels. In this extremity, the falsely-styled *Democratic* State Central Committee, whose aid had been duly invoked by the galled jades, interposed with their Bull, as follows:

BULL OF THE STATE CENTRAL COMMITTEE.

PROVIDENCE, November 1, 1844.

MRS. ABBY H. LORD,
President of the Dorr Liberation Society.

MADAM,—I would respectfully call your attention to the following Resolution, passed this evening at a numerous meeting of the Committee of the Democratic party of this City.

"*Resolved*—That the Chairman of the Democratic State Central Committee be requested to address a note to Mrs. Abby H. Lord, President of the Dorr Liberation Society, to dissuade her from any issue of the contemplated Dorr Liberation Stock, and to request her, if any has been issued, to call it in; and that if the Society persist in their proposed plan, the Chairman of said Committee cause a notice of disapprobation to be published in the Democratic newspapers."

The above is an expression of opinion by Democrats, who are friends of Governor Dorr; and I presume that I need add nothing to induce you to comply with their declared wishes.

Very respectfully,
Your obedient Servant,
W. R. DANFORTH,
Chairman Dem. St. Cen. Committee.

Never let it be said hereafter that there are not courageous men in Rhode Island. These men may not, indeed, have taken up arms in support of the People's Constitution. They may not even have taken up their *quills* in support of it, after having been forbidden to do so by the Algerines, Hunker, or "Law and Order." This, if true, would be no evidence of want of courage on their part, but rather of discipline and due subordination. That they are men of courage in an eminent degree, is proven by their Bull. No body of

* During the Revolution, *Cowboys* were petty spies or scouts between armies or parties at variance; pretending to be the friends of both parties by turns, as they went from one camp to the other.

men, however numerous, *well*-appointed, well-armed, and well-commanded, destitute of that essential element of the soldier—the *Algerine* soldier—would *dare* to attack a Society of Ladies! a Society of Dorr Liberation Ladies! engaged in the holy cause of taking up Dorr's appeal to *them*, precisely where he left it, and carrying it where, in struggling to send it, he met worse than death, civil death, upon the cross of conspiracy and treachery—humation alive! incarceration in the State Prison; forbidden to see father or mother, friend or counsel, while yet, as is now proved, he had the right of an appeal to the highest civil tribunal in the land!

In this situation, when the Judas Iscariots had sold him, and the Simon Peters and Simon Sorcerers had fled from him in dismay, the Ladies' Dorr Liberation Society espoused his cause. And this is the time, and this is the Society of Ladies, that General Danforth, armed cap-a-pie, with all his troops on paper, and in paper, duly heralded by the terrors of an advanced guard of Old Harri's long nines, bravely marches forth to attack! If General Danforth had all the original capital of Robert Morris's bank at his command—to wit: no money, no rations, and three hundred hogsheads of rum—it would puzzle him to collect, even upon *paper*, an army of more prowess. General Danforth must not engross all the honor of this brave exploit. Let him publish his roster and company rolls, and let every ral, and rat, et tatterdemalion, have his meed of praise, glory, and pap. If he wait till the appointments are made, he may have to march through Coventry with but a lank corporal's guard, or a hollow square in the Herald.

Thus attacked, and threatened with the fulmination of other Bulls in the "*democratic* newspapers," the Ladies of the Dorr Liberation Society laid the case before their husbands and other male friends, and invited them to join the Society. The latter promptly responded to this call, and the Society, with increased numbers and vigor, moved on, as it had begun, harmoniously in the pursuit of its objects. The idea of identifying the Hunker-Algerines of the State Central Committee exclusively with the democratic cause, was an artifice too shallow to deceive the people of Rhode Island. Every member of the Dorr Liberation Society, male and female, was a democrat, not merely in name, but in principle and practice. In the important Presidential Election then pending, and now so gloriously consummated, they performed a conspicuous part, and rendered efficient service, by a rapid succession of assemblies to raise hickory poles, upon which were displayed flags, bearing the inscriptions, "Polk and Dallas; Dorr and Liberty." But a single exception is recollected. At Newport, certain Hunkers, who have never been guilty of treason against the Algerines, nor of having been incarcerated with Dorr for faithful adherence to the People's Constitution, insisted upon not having Dorr's name upon a flag which they raised in honor of Polk and Dallas. A heavy gale of wind soon arose, when Boreas pierced the flag with his numerous arrows, and blew it to atoms. Another pole and flag was raised, duly dedicated and inscribed, "Polk and Dallas; Dorr and Liberty." Boreas flung abroad its folds in beautiful display, and there it waved until the elections ended in triumph; showing that Boreas was in favor of Polk and Dallas, but not without the free suffrage qualification of Dorr and Liberty for the basis of their administration.

The threat of the Hunkers, "that if the Society persist in their proposed plan, the Chairman of said Committee cause a notice of disapprobation to be published in the democratic newspapers," had no terrors in it for the Society. They sought to have their proposed plan, the release of Dorr through the aid of a writ of error, and the diffusion of all possible knowledge of the Constitution and Laws of the United States, particularly the right of bearing arms, the privilege of the writ of *habeas corpus*, and other important rights which

had been trodden down by the Algerines—published in the democratic newspapers. They published their "proposed plan," their constitution and proceedings, in the Gazette, and paid for it. They requested the Herald to publish them on the same terms, cash down; but that organ of the Hunkers could not be induced to do it for love, money, nor hatred. The Committee *dared* not to publish the "proposed plan" in the Herald, and then follow it with a notice of their disapprobation in the same paper. The people would be able then to compare them. They would be sure to approve the "proposed plan," and ask what objection the State Central Committee, if they had any democracy or Dorrism about them, could possibly have to its most speedy consummation. This course would have exhibited the cloven foot of the Hunkers in all its deformity. They might as well have published in their organ that the Herald had been sold to the "Law and Order" Algerines for fifteen hundred dollars; and that the money, having been planked with the proposition to purchase,* with liberty to keep it over night, and dream upon it, and sleep upon it if possible, was a boon too tempting to be refused.

The "proposed plan" of the Dorr Liberation Society, was hailed with joy wherever it was known, throughout the country, saving by the Algerines. To both divisions of that corps, the mere proposition was alarming, but perhaps more immediately so to the Hunkers.

The Dorr Liberation Society, after vexatious detentions of about six weeks, obtained a copy of the record of the trial of the case, duly authenticated by the Clerk of the Supreme Court at Newport, and proceeded to draw up their papers. They well knew that it was desirable to commence with a petition signed by Gov. Dorr in person, but as all access to him had been denied, they had no expectation of being able to obtain his signature in any very short time. Still, the regular steps were to be taken, and evidence of the denial of one right was deemed to be good ground for demanding another, or for the allowance of the original right to the writ of error, upon the best application that circumstances would admit of obtaining.

On the 11th of Nov., 1844, Mr. Treadwell, of counsel for the Society, made a written application to the Mayor of Providence, for liberty, in company with Gen. Fessenden, associate counsel, to visit Gov. Dorr, and confer with him upon all matters needful for his defence. A few days after this request was made, the counsel of the Society called on the chairman of the Board of Inspectors, and left a petition with him, with a request that Gov. Dorr might see it, and have liberty to sign it. His verbal and written reply, both in the negative, will be found in the affidavit of Gen. Fessenden, and in the copy of the letter annexed thereto, in the report of the case.

The Mayor of Providence returned the petition that had been left with him on the 18th of Nov., on the evening of the same day. That petition was immediately taken to Mr. Sullivan Dorr, the father of Gov. Dorr, and left with him for his signature, full explanations of the objects of the Society having been made to him. Mr. Dorr expressed favorable opinions in relation to the course the Society had taken, and said he would consult his counsel upon the subject. The next morning Mr. Dorr returned the petition unsigned, and declined giving a reason for not having signed it; but said that, at some future time, he might be able to give such a reason. Mr. Dorr expressed great indignation at the treatment his son received from the Inspectors of the prison. He had signed memorials to the Legislature to *pardon* his son, but he would not sign a petition

* Such a proposal was made by the Algerines, accompanied with the money, about $1500, as was said; urging the proprietor to keep the money over night, and consider of it seriously. The proposition, it is understood, has been declined, and the money returned; whether through the State Central Committee, or otherwise, is unknown to the writer.

to the Supreme Court of the United States, for a writ of error, for the purpose of *justifying* his son, and establishing his innocence. Mr. Dorr had previously expressed the apprehension, that any attempt to carry up the case by writ of error would tend to his son's prejudice in an application for a pardon. On this subject, his remarks were in concurrence with the sentiments expressed by Walter S. Burgess, Esq.

The Dorr Liberation Society regretted exceedingly this determination of the father, to withhold his signature from a petition to carry the case where the son had labored so hard, so ably, and so long, to have it go. The more so, inasmuch as a judicial magistrate of the highest character in the country, was believed to have expressed the opinion, that the authorities of Rhode Island had *no right* to prevent Gov. Dorr from signing a petition for a writ of error; and further, that under the circumstances, the signature of the father of Gov. Dorr to the petition, would be, and ought to be, deemed sufficient to allow the writ of error, if a case of jurisdiction should be presented.

The next step was to get the petition signed by citizens of Providence. Here there was no difficulty. At a late hour in the evening, when it was proposed to have the petition so signed, more than forty citizens of Providence were collected in a few minutes at the "Banner Cottage," who were happy to have an opportunity to *see* and *sign* such a petition. Had it been desirable to obtain more signatures, hundreds, aye, thousands of the citizens of that city, where Gov. Dorr was so well known, would gladly have added theirs. This petition, for prudential reasons,* was addressed "To the Chief Justice and Associate Justices of the Supreme Court of the United States, holden at Washington," and in this shape was shown to one of those Justices. It has been stated, probably on good grounds, that the Justice referred to, after inquiring the reason why Gov. Dorr's father had not signed the petition, remarked, that if instead of having been addressed to the Court, it had, with the evidence exhibited of the exclusion of counsel, which he pronounced to be unlawful, been addressed to himself, he should have cited the authorities of Rhode Island to show cause why the writ of error should not be allowed. The term of the Supreme Court was now too near at hand, to admit of making such citation returnable before the close of that term, and the application was made to that Court at Washington early in December.

It is impossible to describe the consternation which now reigned in the ranks of both divisions of the "Identified." Before the record was obtained, it was confidently and tauntingly said that it never would be obtained. Now, it was manifest that a serious movement for a writ of error was in due progress. Every cow-boy and scout of the Hunkers was put upon duty to watch the movements of the Dorr Liberation Society and their counsel, and make due report; and the reports came so thick, and so fatal to their hopes, that the countenances of the Hunkers, like those of the "Law and Orders," sank down to the brink of despair. Each dynasty (for both are sovereign and admit of nothing but subjects under them) was, by itself, tremendously alarmed, and this alarm acted and reacted upon both houses of the identities. And they had good reason to be alarmed. Both factions were conspirators. Both had conspired to produce the same result, the perpetual imprisonment of Dorr. By different means; but tending to the same end. The one by excluding counsel, and the other by threatening beforehand, that unless they *were* admitted, they would *abandon the case*. You shall not see Dorr, said the "Law and Order" Alge-

* The prudential reasons were in part, that the magistrate had been represented by both "Law and Order" Algerines, and Hunker Algerines, to be decidedly averse to having the case "go up." Burgess and his associates repeatedly stated that they *knew* he would not allow the writ of error. Another proof of the identity of the two dynasties of the Algerines.

rines." Then, as we told you before, we will abandon the case, and do nothing about the writ of error, replied the Hunker Identities. Both Divans kept their word to *each other*, as faithfully as Burgess kept his pledge to conceal Dorr's removal. Both were false to Dorr. Neither had occasion to exclaim,

"A plague upon't! when" Algerines "can't be true to each other."

Both factions assailed the Dorr Liberation Society, with all the virulence which malice could engender, and both have their reward in disappointment and defeat.

Early in December, 1844, Mr. Treadwell, of counsel for the Society, took the papers to Washington, and on the 11th of that month, on the tenth day of the term, presented a motion with the record, and three affidavits, to the Supreme Court of the United States, for a writ of *habeas corpus*, to bring out Governor Dorr to Washington, and enable him to sign a petition for a writ of error; or to allow the writ of error.* Shortly afterwards, the Court informed the Counsel of the Society that on Friday, the 20th of December, the day assigned for the consideration of motions, they would hear him in support of his motion. On that day the motion was argued by Mr. Treadwell. On Friday the 27th, Mr. Justice McLean delivered the opinion of the Court, overruling the motion.† The motion for the writ of *habeas corpus* was denied, because, in the opinion of a majority of the Court, the act of the Congress of 1789 did not authorize them to bring out from confinement under a State process, civil or criminal, any person for any other purpose than to be examined as a witness. By this decision, if a person indicted for treason against the United States, should get some one to imprison him under process from any State, for a debt of five dollars, fictitious or real, no process from any authority of the United States could arrest him.‡

The motion for a writ of earor was denied, by a majority of the court, because the counsel did "not act under the authority of Dorr, but at the request of his friends." Neither of the counsel of the Dorr Liberation Society ever pretended to act under the authority of Governor Dorr. On the contrary, the affidavits in the case prove, that the reason why they acted for the Society,

* An adequate description of the intense excitement which pervaded all parties in Rhode Island, upon the mere statement of the fact that this motion was before the Supreme Court of the United States, would exceed the space which has been allotted to this part of the publication. The prominent men who claimed to lead the two parties were downhearted, sad, dismayed. The Hunkers no less than the Algerines. The numerous letters written from Rhode Island at this time, to persons in other States, abound with facts and incidents to prove this. Up to the time the motion was made, the opponents of Dorr in other States could not credit the fact that his Counsel were excluded from him, even in prison. A member of the Senate, when told so by another Senator, replied that it was impossible. That such a thing was never heard of in a civilized country. But the affidavits submitted with the motion, prove the fact beyond controversy, and then men of all parties joined in condemning the barbarous deed. It has often been stated, probably on good grounds, that the authorities of Rhode Island were advised by their friends and correspondents, that no one could justify them in this particular. That they must give it up, and open the prison doors, or that the Counsel and Court would unquestionably find means to bring up the case without their consent, and against their consent. The inspectors yielded the point which they had often asserted they never would yield, and it has been said they went so far as to solicit the Counsel of Gov. Dorr, who had tamely submitted to their refusal, to renew his application to them for leave to visit him. A full development of the circumstances connected with this extraordinary somerset, may yet be forthcoming. Some interesting letters upon the subject, are known to be in existence.

† Many of the newspapers have stated that this decision was declared by Mr. Justice McLean to be unanimous. The decision was not unanimous, and was not so declared by Judge McLean. No such intimation was put forth by any member of the Court.

‡ This is not only a queer, but an alarming state of law. A pirate, a traitor, or a murderer, can skreen himself under imprisonment for a pretended debt of five dollars, and defy the power of the Union to arrest him! No wonder the Court advised the Judiciary Committee of the Senate to amend the law. That committee reported a bill for the purpose, but it is believed that it was not acted upon, or at least not passed.

or acted at all, was, because the authorities of Rhode Island had conspired against Dorr's right of appeal, and refused to give him an opportunity to see counsel, or employ any one to act for him. This was the point which the Dorr Liberation Society thought proper to contest with the authorities of Rhode Island, supported as the latter were substantially, by the Hunkers of the State Central Committee. The Society determined that the gates of the temple of justice, the Supreme Court of the United States, which the Algerines had closed upon Dorr, and vauntingly proclaimed that they had closed them upon him for ever, should be opened, *and they were opened!* That Dorr should see counsel, and have liberty to apply for a writ of error, *and so it was, and speedily.* The Counsel of the Society never sought to see Governor Dorr, for any other purpose than so far to set him at liberty, as to give him an opportunity to employ whom he would, to carry up his case. If Dorr has not had that liberty; if he has in any degree been deprived of it; if by a conspiracy among the Pilates and Herods of the two divans of Algerines he has been under the necessity of employing Burgess, who, as his own publications prove,* had abandoned Dorr's cause, and left him exposed to the atrocious cruelties of the Inspectors of the prison, it is not the fault of the Dorr Liberation Society. That Society, by its vigorous and persevering efforts in the cause of justice and humanity, brought to bear upon Dorr's jailors an influence which could no longer be resisted, and forced the conspirators to open the prison doors. When the father and mother of Gov. Dorr were, under the pressure of this influence, *invited* by the authorities to go into the prison and see their son, who, as the Algerines said, was *dead*, but now to his parents was alive again, the Dorr Liberation Society waited on them, and tendered to them their correspondence and papers, with liberty to take them into the prison, and show that son what had been done by that Society; done spontaneously, in answer to his appeal to them as a part of the people of the country. The offer was not accepted. When Burgess had liberty to visit Gov. Dorr in prison, the use of the papers was tendered to him for the same purpose. His reply in effect was, that he should like to examine the papers, and show such parts of them as he pleased, to Gov. Dorr; but that he would not communicate to the Society any reply that Gov. Dorr might make upon the matter.

The Society were grieved, but not disappointed, at the course which the parents of Gov. Dorr continued to pursue. Those parents, equally regardless of the wishes and character of their son, had continued to knock at the portals of the divan with their petitions, not for his justification, and the establishment of his innocence, but for a pardon as a criminal! For a pardon, that would not restore to him his civil and social rights, but convert the whole State into a State Prison to him; and leave every Algerine at liberty to put forth the finger at him, or cuff, kick, and spit upon him with impunity! And this was all that the most bitter foes of Gov. Dorr among the Algerine authorities, sought to accomplish. The Hunkers, for the same reasons which influenced the authorities, strove to effect the same purpose.

It is the character of Dorr, restored to his civil, social, and political rights, which these usurping divans, these conspiring identities dread. His integrity; his intelligence; his indomitable love of justice; his experience; his knowledge of the character, wants, and desires of all classes of the people of Rhode Island, and above all his invincible devotion to the most liberal principles of free, republican government, founded as it can only be on the broad basis of the

* There is good reason to believe, that one or more of the counsel of Governor Dorr were informed by the ardent friends of Dorr in other States, that their own publications were generally considered as evidence that they had abandoned his cause.

Right of Suffrage, unite in rendering him a dangerous rival to any candidate for public honors, which his opponents can bring into the political field.

Dorr's case is now before the Supreme Court of the United States, where it will be revised, and doubtless the sentence will be reversed. In such case, if his health should not be greatly impaired, nor his mind shattered by the barbarous cruelties of the authorities of the prison, two-thirds of the people of Rhode Island would immediately rally around him, and make him their governor. This, both factions of the Algerines know full well, and hence they are equally anxious for his political degradation and destruction.

The Dorr Liberation Society, having in response to Dorr's appeal put their hands to the free suffrage plough, will continue to guide it until they break up the rotten stumps and roots of the Algerines, and restore Dorr to liberty. They will then insist on his taking such a prominent part in the cultivation of the political field, as the then disenthralled people of Rhode Island may choose to assign him. This done, the Society, regardless alike of the flatteries of professing friends, and the frowns and threats of open or secret foes, will publish an account of its efforts and doings; of its attempts, successful or otherwise, for the relief of this suffering victim of oppression, and of the means, successful or unsuccessful, which have been resorted to by the Algerine Identities, to thwart the plans of the Society and turn it from its purposes. When Dorr shall be liberated and restored to the enjoyment of all his rights, the Society will be ready to participate in the burthens and benefits of a well-balanced constitutional government, equally with all their fellow citizens. Till then, they are resolved to retain their organization as a society, and strive to carry out "their proposed plan." Then and not before, will the Society as such cease from their labors.

THE

CASE OF GOVERNOR DORR.

MOTION FOR A WRIT OF HABEAS CORPUS FROM THE SUPREME COURT OF THE UNITED STATES.

WASHINGTON, *ss.*

SUPREME COURT, DECEMBER TERM.

Tenth day, December 11, 1844.

In the case of the State of Rhode Island and Providence plantations,

vs.

Thomas Wilson Dorr, now confined in the State's prison at Providence, Rhode Island, aforesaid.

Francis C. Treadwell, of counsel in behalf of said Dorr, moves the Court that a writ of *habeas corpus* issue forthwith to bring out the said Dorr to Washington aforesaid, and give him an opportunity to sign a petition for a writ of error in his own behalf, and to prosecute the same, to the end that the whole record of the Supreme Court of the State of Rhode Island in said case may be certified in due form of law to the Supreme Court of the United States, and the errors therein be corrected. The facts in this case, briefly stated, are—

First. That said Thomas W. Dorr was indicted for treason against the State of Rhode Island aforesaid, at Newport, at the term of the Supreme Court of Rhode Island, holden on the fourth Monday of August, 1842, and tried in pursuance of said indictment, and a verdict of guilty having been rendered by the jury in the case, was, on the twenty-fifth day of June, 1844, sentenced to "be imprisoned in the State's prison at Providence, in the county of Providence, for the term of his natural life, and there kept at hard labor in separate confinement."

Second. That a suspension of the sentence for one day was allowed by the Supreme Court of Rhode Island, for the purpose of preparing a bill of exceptions, "with a view to suing out a writ of error to the Supreme Court of the United States," and a bill of exceptions was then prepared, and makes a part of the record, at page 82.

Third. That the Court refused to suspend the execution of the sentence, and to await the decision of the case by the Supreme Court of the United States upon a writ of error, although notified that the imprisonment of the defendant would disable him from prosecuting his defence. See Burke's report, page 1047.

Fourth. That the inspectors of the State's prison utterly refused to let said Thomas W. Dorr sign or see a petition for a writ of error as aforesaid.

Fifth. That the Governor of the State of Rhode Island refuses, and, as he alleges, for want of power, to let Dorr sign or see such a petition.

Sixth. That sundry citizens of Providence aforesaid have signed a petition

to this honorable court for a writ of error, or for a writ of *habeas corpus*, which petition is now presented with this motion.

The documents, papers, and evidence herewith submitted, and prayed to be considered a part of this motion, consist—

First. Of the petition of sundry citizens of Rhode Island, named in the sixth specification of facts aforesaid, marked, One.

Second. Of the affidavit of Samuel Fessenden, Esq., marked Two, with the letter of Thomas M. Burgess, Esq., mayor of Providence, marked Three, annexed. The affidavit of John S. Eddy, Esq., marked Four, and the affidavit of Francis C. Treadwell, marked Five, with the copy of an application of said Treadwell to the mayor of Providence, annexed, and marked A.

Third. The record of the trial, indictment, and judgment aforesaid, certified by William Gilpin, clerk of said court.

Fourth. The petition presented by Gen. Fessenden to Thomas M. Burgess, mayor of Providence, and returned by him with his letter, marked Six.

Fifth. The report of the select committee of the House of Representatives upon the affairs of Rhode Island, by Edmund Burke, Esq., chairman.

The points relied upon for a reversal of the sentence are three, all of which the Supreme Court of the State of Rhode Island overruled.

First. That the act of the State of Rhode Island for punishing treason is repugnant to the constitution and laws of the United States; and that the crime of treason cannot be committed against a separate State, but against the United States.—*See Record, p.* 82, *Burke's Report, p.* 1021.

Second. That said Dorr was governor of the State, duly elected, under the people's constitution—a republican constitution or form of government—and that he offered to prove these facts.—*Record, p.* 50, 51, 77.

Third. That the whole record shows that if said Dorr levied war at all, it was against the United States, and cannot be inquired of by any State court.

The authorities relied upon as giving jurisdiction of the case to this court, are—

First. The third article of the constitution of the United States, which vests the power in this court.

Second. The twenty-fifth section of the judiciary act of 1789, which prescribes the mode of its exercise by writ of error.

The writ of *habeas corpus* in this case is, I apprehend, a writ of right, the privilege of which, under the constitution of the United States, cannot be suspended but in the two contingencies mentioned in the second clause of the ninth section of article first. The necessity of the writ of *habeas corpus* in this case arises because the Supreme Court of the State of Rhode Island and the inspectors of the State's prison at Providence have thrown impediments in the way of the exercise of the constitutional right of said Dorr "to have his defence examined by that tribunal whose province it is to construe the constitu ion and laws of the Union."—*See opinion of the Supreme Court in Cohens and Virginia, 6th Wheaton and 3d Story's Com. on Con., p.* 596.

F. C. TREADWELL,
Of counsel in behalf of said Dorr.

I.

PETITION OF J. C. DAVIS, J. S. EDDY, AND FORTY-FOUR OTHERS.

To the Chief Justice, and the Associate Justices of the Supreme Court of the United States, holden at Washington, being the present seat of the National Government, on the first Monday of December, in the year of our Lord, one thousand eight hundred and forty-four,—or to either of the Justices of the said court in either of the several circuits.

Complain, and respectfully represent the undersigned, citizens of the State of Rhode Island and Providence Plantations, near friends of Thomas Wilson Dorr.

That at the Term of the Supreme Judicial Court of the said State of Rhode Island, and Providence Plantations, holden at Newport, in and for the county of Newport in said State, on the fourth Monday of August, in the year of our Lord one thousand eight hundred and forty-two, an Indictment for the crime of Treason against the said State of Rhode Island and Providence Plantations, was found by the Grand Jurors of the said State of Rhode Island and Providence Plantations, and in and for the body of the county of Newport, against the said Thomas Wilson Dorr, of the city of Providence, in the county of Providence, Attorney and Counsellor at Law, in which Indictment the said Thomas Wilson Dorr is charged in four several and distinct counts, that he, being an inhabitant of and residing within the State of Rhode Island and Providence Plantations, and owing allegiance and fidelity to said State, did, on the several days and times set forth in the several places therein specified, wickedly, and traitorously, unmindful of his allegiance aforesaid, conspire to levy, and did actually levy, war against the State of Rhode Island and Providence Plantations. Which said indictment is made and has become a matter of record in said court, as by a copy thereof, herewith presented, and verified under the seal of said court, fully appears. And the undersigned citizens, as aforesaid, further complaining, say, that at an adjourned term of the aforesaid Supreme Court, begun and holden at Newport aforesaid, on the twenty-ninth day of February, in the year of our Lord one thousand eight hundred and forty-four, the said Thomas Wilson Dorr was brought into court, and arraigned on said indictment, and caused to plead thereto, and that afterwards such proceedings were had on said indictment, that at the March term of the Supreme Court of the State of Rhode Island and Providence Plantations, holden at Newport aforesaid, by adjournment, on the twenty-sixth day of April, 1844, a Jury was completed and empannelled in the way and manner as in the records of said court appears, for the trial of the said Thomas Wilson Dorr on said indictment; and the undersigned further complain and allege that such further proceedings were had on said indictment, and the trial of Thomas Wilson Dorr, thereon, that on the seventh day of May, 1844, the Jury so empannelled as aforesaid, under the direction of said court in matters of law, returned a verdict of guilty against the said Thomas Wilson Dorr, which the said court ordered to be, and which was received and recorded; and which said verdict has also become matter of record in said court. And the undersigned further complain and allege, that, notwithstanding all the said Thomas Wilson Dorr's complaints, objections, and remonstrances, made as well by the counsel of the said Thomas Wilson Dorr, as by said Thomas Wilson Dorr himself, the said Supreme Court, on the twenty-fifth day of June, one thousand eight hundred and forty-four, proceeded to, and did sentence the said Thomas Wilson Dorr to be imprisoned for the term of his natural life, in the State's Prison at Providence, in the county of Providence and State aforesaid, and there kept at hard labor in separate confinement, as by the full record of said Indictment, and the proceedings thereon, and the verdict

of the Jury aforesaid, and the judgment and sentence of said Court, and a copy of which record, duly certified under the seal of said Court, and accompanying this complaint, fully appears, and under which judgment and the sentence of said Court the said Thomas Wilson Dorr is now suffering imprisonment. And to which said rulings and directions in matters of law, the said Thomas Wilson Dorr, by his counsel on his behalf, offered and tendered a Bill of Exceptions as by the record appears, and which herewith accompanies said Petition; which said record of said judgment of said Court so as aforesaid, certified, and authenticated, is now remaining in said Court in full force, and is in no way annulled or reversed.

And the undersigned further aver that in the record of said Indictment, and of the proceedings thereon, and of the judgment and sentence of said Supreme Court, manifest error hath intervened. And that said Indictment so as aforesaid found, and the proceedings had thereon, and the verdict of said Jury so found, and the judgment so rendered thereon, and the sentence so awarded thereon, against the said Thomas Wilson Dorr and the execution thereof so as aforesaid carried into effect upon his person, are in violation of, and opposed to, and subversive of the Constitution of the United States, are wholly erroneous in the following particulars:—

First. It appears from the record aforesaid, that the said Supreme Court did rule and direct the Jury as the law by which they were by their oaths bound, that the treason charged in said Indictment, to wit, the levying of war against an individual State, might be committed against an individual State. Whereas, the said Thomas Wilson Dorr avers that the treason set forth in said indictment, and the overt acts therein charged, to wit, the levying of war upon and against the State of Rhode Island and Providence Plantations, is a levying of war against the United States, according to the true intent and meaning of the Constitution of the United States, and can only be committed against the United States, and can only be inquired of in the Circuit Court of the United States for the first circuit, on an indictment found by the Grand Jury of the United States, duly and legally summoned, empannelled and charged to inquire for the United States for said first circuit, against any person guilty of said crime, and can only be tried in said Circuit Court by a Jury duly empannelled and sworn to try the same; and because any treason, by levying war against a State, and the offence thereby committed against the State, is merged in the treason committed against the United States.

Secondly. Because the people who are citizens of a State have a right by the laws of nature to frame for themselves a government when that under which they live is found, on experiment, to be unequal and oppressive,—and under the Constitution of the United States, to alter, amend, or frame a Constitution of Government for themselves, provided only that it be Republican; and because the said Thomas Wilson Dorr offered to prove by competent evidence, that a majority of the adult male citizens of the United States resident in the State of Rhode Island and Providence Plantations, had framed and adopted for the Government of said State, a Republican form of Government which had gone into operation, by the choice and qualification of said Thomas Wilson Dorr as Governor, and by the choice and qualification of other officers provided for by said Constitution, which proof the said Court rejected, and thereby violated the fourth section of the fourth article of the Constitution of the United States, which provides that the United States shall guarantee to every State in this Union, a Republican form of Government.

Thirdly. Because it appears from the whole record, that if the said Thomas Wilson Dorr, wrongfully, and without any justifiable authority, levied war, it was a war against the United States only, and therefore that he could not,

according to the Constitution of the United States, and without a violation thereof, he held amenable to be tried for said crime, by any State Court.

Wherefore the aforesaid citizens of Rhode Island whose names are undersigned, pray that a writ of error in behalf of the said Thomas Wilson Dorr, may go to the Judges, or some of them, of the Supreme Court of the State of Rhode Island and Providence Plantations, or that a writ of *habeas corpus* may issue forthwith to bring out the said Thomas Wilson Dorr, and give him an opportunity to sign a petition for a writ of error on his own behalf, to the end that the whole record of said Indictment and trial and judgment, may be certified in due form of law to the Supreme Court of the United States, and that the errors aforesaid therein, and which are set forth in this petition, may be corrected, and the judgment in the premises so rendered by the said Supreme Court of the said State of Rhode Island and Providence Plantations, may be reversed and annulled and held for naught, and the said Thomas Wilson Dorr be released from his said imprisonment so suffered in violation of the Constitution of the United States.

[Signed by] JOHN S. EDDY,
JOHN C. DAVIS,
and 44 others.

II.—AFFIDAVIT OF SAMUEL FESSENDEN.

I, Samuel Fessenden, of Portland, in the county of Cumberland and State of Maine, counsellor at law, on oath state: That I was employed by the friends of Thomas Wilson Dorr, confined in the State prison in Providence, Rhode Island, pursuant to the sentence of the Supreme Court of Rhode Island and Providence Plantations, on a conviction in said court on an indictment charging said Dorr of having committed the crime of treason by levying war against said State, as a counsellor at law, practising in the circuit court of the United States, to render my aid in carrying up the case of the said Thomas Wilson Dorr, on writ of error to the Supreme Court of the United States, for revision and correction of the errors as stated and set forth in the record of his, said Dorr's trial and conviction; that, in the discharge of my duty by virtue of said employment, I called on Mr. Justice Story of the Supreme Court of the United States, who informed me that, as an indispensable preliminary to the granting a writ of error, a petition signed by said Dorr must be presented, praying that a writ of error might be granted.

I then drew up a petition—such as I judged to be suitable and proper for said Dorr to sign—and, in company with Francis C. Treadwell, Esq., presented said petition to Thomas M. Burgess, Esq., mayor of the city of Providence, and, by virtue of his office, chairman of the board of inspectors of the State's prison in Providence, where said Dorr is confined, with the request that said Dorr might have said petition placed in his hands for perusal, and with liberty to sign the same should he think proper.

The said Burgess then informed me that he had no idea that said Dorr would be permitted to see or sign said petition; that he himself should be opposed to it; that it was, as he believed, the determination of the authorities of the State that said Dorr should have no opportunity to carry up his case by writ of error, and that they did not intend that there should be any interference on behalf of said Dorr for that end. With much persuasion, I induced the said Burgess, the mayor, to take said petition, and consult with the other members of the board of inspectors. He took the petition for that purpose, saying at the same time that he knew they would not permit it, and that he, as one of the board, should not consent to have said Dorr see or sign said petition.

On this twentieth day of November, I received the annexed letter from said

Burgess, with the petition which I handed to him; and the sheets containing said petition I have marked with the initials of my name.

SAMUEL FESSENDEN.

UNITED STATES OF AMERICA,
District of Maine.

On this 20th of November, 1844, personally appeared before me the above named Samuel Fessenden, and made oath to the truth of the facts stated in the above affidavit by him subscribed.

ASHUR WARE,
Judge of United States for the District of Maine.

III.

PROVIDENCE, November 18, 1844.

GENTLEMEN:—I have seen several of the inspectors of the State prison this afternoon, who agree with me, that we ought to take no action upon your request; because it is so very similar in its character to one which the General Assembly, at their October session, virtually refused to grant.

I enclose the papers, and remain, respectfully, your obedient servant,

THOMAS M. BURGESS.

To Messrs. FESSENDEN and TREADWELL.

[The petition referred to by General Fessenden, marked S. F., is the original of which the one above is, with very slight variation, a transcript.]

IV.—AFFIDAVIT OF JOHN S. EDDY.

I, John S. Eddy, of city and county of Providence, and State of Rhode Island, gentleman, on oath state, that on the twenty-fifth day of November, A. D. eighteen hundred and forty-four, in company with Francis C. Treadwell, Esq., I called upon James Fenner, Esq., Governor of the State of Rhode Island aforesaid, at his residence in Providence aforesaid, when the said Treadwell presented to said Governor Fenner a petition addressed to the Chief Justice and Associate Justices of the Supreme Court of the United States, or to either of said Justices in either of the circuits, praying that a writ of error may be granted in the case of the State of Rhode Island against Thomas Wilson Dorr, confined in the State's prison in Providence, Rhode Island, aforesaid, pursuant to the sentence of the Supreme Court of Rhode Island and Providence Plantations, on a conviction in said court, on an indictment charging said Dorr with having committed the crime of treason against the said State, and requested the said Governor Fenner to permit said Dorr to read said petition, and to sign the same, if he, the said Dorr, should desire to do so. That the said Governor Fenner replied to said Treadwell, that he, said Governor Fenner, had no power to hold intercourse with said Dorr, or with any other person confined in the State prison aforesaid, nor to permit any other person so to do. That by the laws of the State of Rhode Island aforesaid, the inspectors of said prison were the only persons who had power to permit such intercourse, or to allow any person to see any prisoner confined in said prison; and the said Governor Fenner, thereupon, for the reasons above stated, refused to give permission for the said Dorr to sign or to see the petition aforesaid.

JOHN S. EDDY.

The State of Rhode Island and Providence Plantations, Providence county, ss.

In Providence, this twenty-sixth day of November, A. D. eighteen hundred and forty-four. Subscribed and sworn to, by John S. Eddy. Before me,

HENRY MARTIN,
Notary Public.

V.—AFFIDAVIT OF F. C. TREADWELL.

I, Francis C. Treadwell, of Portland, in the county of Cumberland, and State of Maine, Counsellor at Law, on solemn affirmation say, that I have been, and now am, employed by the friends of Thomas Wilson Dorr, confined in the State Prison in Providence, Rhode Island, pursuant to the sentence of the Supreme Court of Rhode Island and Providence Plantations, on a conviction in said Court on an indictment charging said Dorr with having committed the crime of Treason by levying war against said State, to render my aid in carrying up the case of the said Thomas Wilson Dorr, by writ of error to the Supreme Court of the United States, for revision and correction of the errors as stated and set forth in the record of said Dorr's trial and conviction. That about the latter part of the month of July last past, in the discharge of my duty by virtue of said employment, I called on Walter S. Burgess, Esq., of Providence aforesaid, Counsellor at Law, and on the late Samuel Y. Atwell, Esq., of Glocester, Counsellor at Law, then at Providence, but since deceased, both of whom informed me, that in connection with George Turner, Esq., of Newport, in the State of Rhode Island aforesaid, Counsellor at Law, they, as Counsel for said Dorr, were about to make application to the Board of Inspectors of the State Prison, at Providence aforesaid, for liberty to consult with said Thomas Wilson Dorr, in the prison aforesaid, in relation to carrying the case aforesaid, by writ of error to the Supreme Court of the United States. That both said Burgess, and said Atwell, requested me to call on them again, and also on said Turner, and confer freely with them all upon the subject of carrying the case of the said Dorr by writ of error to the Supreme Court of the United States as aforesaid, and that both said Burgess, and said Atwell, promised to let me know the result of their said application to the Inspectors of the Prison aforesaid, early, or immediately upon its communication to them; and both said Burgess and said Atwell requested me not to take any legal proceedings, not even to get a copy of the Record aforesaid, until they should receive an answer from the inspectors of the prison aforesaid, and should publish a report of the Trials of the case aforesaid, which they then had in press for immediate publication. That in pursuance of the request, so made by the said Burgess, and the said Atwell, I called several times on the said Burgess, and conversed with him freely upon the case aforesaid; and that also, in pursuance of the request made as aforesaid, I called several times at the American Hotel, in Providence aforesaid, the lodging-place of the said Atwell, and in answer to my inquiries for said Atwell, was told by the keeper of the said House, that said Atwell was in his room, too much indisposed to see company. And this affirmant further says, that on a certain day in the month of August last past, he met the said Turner, at the office of said Burgess, in Providence aforesaid, when said Turner requested this affirmant to call before eleven o'clock on the morning of that day, on said Atwell, at said American house, or hotel, and converse with said Atwell upon the case aforesaid, and upon the propriety of sueing out a writ of *habeas corpus*, in a certain contingency—that on the same day I called at the Hotel aforesaid, and inquired of the keeper thereof for said Atwell, and was told by said keeper, that said Atwell immediately after parting with said Turner, at breakfast time that morning, had met with an unexpected opportunity to return to his residence in Glocester, and had departed thence some hours before, from which time to the day of his decease, as this affirmant is informed and believes, the said Atwell never returned to Providence aforesaid. And this affirmant further says, that on or about the twenty-sixth day of August last past, the said Walter S. Burgess, accosted this affirmant in the street at Providence aforesaid, and then and there said, that he the said Burgess had received from the Inspectors of the State Prison aforesaid, an answer, de-

nying the Counsel of said Dorr the liberty to consult with him upon the subject of taking the case aforesaid, by writ of error to the Supreme Court of the United States, and that himself and said Atwell, and Turner, had in such case agreed to abandon the case, and without said Dorr's personal instructions, they, said Atwell, Turner and Burgess, would do nothing further in the matter, and that the inspectors aforesaid, had referred the request, or petition, to the Judges of the Supreme Court, and to the Legislature of the State, which said Burgess pronounced to be a rejection of the said petition. And the said Burgess then and there also stated, that he, said Burgess, had no idea of going to Washington with a writ of error, upon a case for a man, when he did not know whether the man wished to have the case go there or not. That it might take five years to get a decision upon the case, and that the carrying it up thence might operate to the prejudice of the said Dorr in obtaining a pardon from the Legislature of the State of Rhode Island aforesaid. And the said Burgess then and there further stated, that this affirmant could now carry up the case by writ of error as aforesaid, if he thought proper so to do; that they, the said Burgess, Atwell and Turner, had before agreed to give up the case, in case the Algerine Inspectors of the State's Prison aforesaid, should refuse to let them, the said counsel, consult with the said Dorr; and that all objections to the carrying up of said case by writ of error as aforesaid, by this affirmant, if he knew of any way to do it without first obtaining permission from the inspectors of the prison, or other authorities of Rhode Island aforesaid, on the part of said Burgess, Atwell, and Turner, were now removed, and the way all clear for the action of this affirmant in the premises. And this affirmant further says, that on the ninth day of September last past, by the request of many of the near friends of the said Thomas W. Dorr, he went to Portland in the State of Maine, aforesaid, and engaged the services of Samuel Fessenden, Esq., Counsellor at Law, in the carrying up by writ of error to the Supreme Court of the United States, the case of the said Dorr; and on the twelfth day of September last past, as appears by his minutes, then made, this affirmant went to Newport, in the State of Rhode Island aforesaid, to the office of the Clerk of the Supreme Court of Rhode Island aforesaid, and engaged the Clerk of said Court to make a copy of the record aforesaid, in the case of the said Dorr, and urged said Clerk to make the copy of said record speedily; which said Clerk promised to do; and this affirmant offered to pay said Clerk then in advance, for the copy of said record; which payment in advance said Clerk refused to receive; and when three weeks afterwards this affirmant went from Providence to Newport aforesaid, for the said copy of said record, and the Clerk had not begun to make it out, and could not or would not say when he would either begin or finish the said copy of said record. And this affirmant further says, that in compliance with the advice of several of the friends of said Dorr, at Newport, and elsewhere, who feared that a copy of said record could not otherwise be obtained in time to be available at the then next term of the Supreme Court of the United States, he was under the necessity of employing, at an expense of twenty-five dollars, a man to go into the office of the said Clerk, of said Court, at Newport aforesaid, and make a copy of said record from many detached papers as they were handed him by said Clerk, which caused a delay as nearly as this affirmant can now recollect, of more than three weeks longer, and several inconvenient and expensive journeys to Newport; and still the said Clerk charged and received the official price for making a copy of said record.

And this affirmant further says, that on the aforesaid twelfth of September last past, he saw at Newport aforesaid, the said George Turner, at his office which is contiguous to the office of William Gilpin, the Clerk of the Court

aforesaid, and told said Turner that he, said affirmant, had come to the office of the Clerk of said Court, to obtain a copy of said record, for the purpose of carrying up the case of said Dorr by writ of error to the Supreme Court of the United States. That said Turner made no objection thereto, but then and there said, that said Atwell, Burgess and himself, had previously agreed that if the inspectors of the said prison should refuse to let them consult personally, with said Dorr, they, the said counsel, would give up the case of the said Dorr, and make no further attempt to carry up the said case by writ of error to the Supreme Court of the United States; and the said George Turner then and there offered his services, and told this affirmant he would freely yield them to the Clerk of the Court aforesaid, in preparing or arranging the papers from which the record was to be made out, and would assist said Clerk, and aid him in making, as speedily as possible, a copy of the said record.

And this affirmant further says, that in the month of August last past, when the application of the said Burgess and Turner, for permission to consult with said Dorr, was pending before the inspectors of the prison aforesaid, that he, this affirmant, met with one of said inspectors, by the name of Cranston, whose first name he believes is Barzilla, but of that is not certain, when said Cranston, at Providence aforesaid, told this affirmant that the application of said Burgess and Turner was not definitely acted upon by said inspectors; that he, said Cranston, was not in favor of granting the permission asked for in said application, and he believed it ought to be, and would be, refused; and said if I should make a similar application, it would also, without doubt, be refused; and the said Cranston then asked me why I did not arm myself, and force my way into the prison. The said Cranston further said, that he did not believe the case of said Dorr could be taken by any means, before the Supreme Court of the United States, without the consent of the authorities of Rhode Island, in permitting counsel to consult with said Dorr; and that consent he believed could never be had. That he was opposed to it, and he believed both the Supreme Court, and the Legislature, were also opposed to it.

And this affirmant further says, that some days after the interview with said Cranston above named, he met said Cranston at Providence aforesaid, when said Cranston told this affirmant that the Inspectors of the prison aforesaid had refused to permit said Burgess and Turner to consult with said Dorr, or hold any communication with him whatever. That they, said counsel, or myself, might carry up the case of said Dorr to the Supreme Court of the United States if we could. That he did not believe we could do it without the consent of the authorities of Rhode Island, and that consent he felt assured we should never be able to obtain.

And this affirmant further says, that on or about the eleventh day of November last past, in company of Henry Lord of Providence aforesaid, this affirmant called upon Thomas M. Burgess, Esq., mayor of the city of Providence, and by the hand of said Henry Lord, presented to said Burgess, mayor of Providence, aforesaid, a written request for permission for Samuel Fessenden, Esq., and myself, to visit said Dorr in said prison, and confer with him in all matters needful for carrying his case before the Supreme Court of the United States; a copy of which paper, with a copy of the certificate of said Lord, annexed thereto, marked A, is hereunto annexed. And this affirmant further says, that said Thomas M. Burgess stated that he was the chairman of the inspectors of the State Prison aforesaid, that the Board would not have a regular meeting until January next; after the next meeting of the Legislature of the State; that the inspectors would, beyond question, refuse the application unless the Judges of the Supreme Court of Rhode Island should certify that the interview was necessary. That they, the inspectors aforesaid, had

done so upon the application of Messrs. Burgess and Turner, and would doubtless do so now in this case. That he would show the application to some of the members of the Board, but he had no doubt of their concurrence with him in refusing to grant the interview applied for. And this affirmant further says, that on the eleventh day of November last, he received from the said Burgess, mayor of Providence aforesaid, a permit to visit the State Prison aforesaid, and in company with Henry Lord, went there and saw the prisoners at work, apparently painting fans. That said prisoners were sitting with their backs towards the spectators, who, looking through an iron grating, could not see the faces of the prisoners. That farthest off from the grating aforesaid, this affirmant saw a person sitting at work in an arm-chair, whom, from the color of his hair and the general appearance of the back part of his head and shoulders, this affirmant believes to have been the said Thomas Wilson Dorr, but the distance was so great, probably twenty yards or more, that this affirmant cannot, from his own observation, be certain of the identity of said Dorr. This affirmant further states, that a keeper is stationed in the room with the prisoners, facing the latter, so that, at a glance, he can see all their motions; and that the regulations of the prison aforesaid, forbade a prisoner to speak to a spectator, or to a fellow-prisoner, under penalty of being deprived of food and water for twenty-four hours, or of corporal punishment.

And this affirmant further says, that on Monday, the eighteenth day of November last past, in company with Samuel Fessenden, Esq., and Walter S. Burgess, Esq., he called upon Thomas M. Burgess, Esq., mayor of the City of Providence aforesaid, at the office of the mayor, when said Thomas M. Burgess, stated that the Inspectors of the State Prison of whom he is chairman, had decided to refuse permission to Gen. Fessenden and this affirmant as Counsel, to see or confer with said Thomas W. Dorr. And this affirmant further says, that in addition to the facts stated, in the affidavit of the said Samuel Fessenden, Esq., the said Thomas M. Burgess, mayor of Providence aforesaid, asserted at the interview last named, that the said Thomas Wilson Dorr could come out of prison if he had a mind to do so, by asking the Legislature of the State of Rhode Island to pardon him. That said Dorr had been told so; and he, the said Thomas M. Burgess, himself, had so told the said Dorr; that the "Law and Order party," and the Legislature, were desirous that said Dorr should be liberated, and that if he would petition for a pardon, it would be granted without even a reference of the petition. The said Thomas M. Burgess further stated, that he had no doubt it would be so, from what he had heard them, the members of the Legislature of Rhode Island, and the "Law and Order party," say repeatedly.

FRANCIS C. TREADWELL.

Affirmed before Wm. Thos. Carroll, Clerk of the Supreme Court of the United States.

(A.)

State of Rhode Island, &c.,

vs.

Thomas W. Dorr.

Providence, Nov. 11th, 1844.

Sir:—Having been appointed by certain citizens of Rhode Island to carry the above entitled case by writ of error to the Supreme Court of the United States, for the purpose of having the defence of the defendant "examined by that tribunal, whose province it is to construe the Constitution and Laws of the Union," and to enable him the more effectually to assert his "Constitutional right," thereto, I deem it my duty to request of the Inspectors of the State Prison, through yourself, as one of them, permission for myself and for my

associate Counsel, Samuel Fessenden, Esq., of Portland, in the State of Maine, Counsellor at Law, to visit the defendant in the State Prison, and confer with him in all matters needful for perfecting his defence aforesaid.

[Signed] FRANCIS C. TREADWELL,
Counsel for certain citizens of Rhode Island.

THOMAS M. BURGESS, ESQ., Mayor of the City of Providence.

I certify that the above is a true copy of the original presented by me in presence of F. C. Treadwell, Esq., to Thomas M. Burgess, Esq., Chairman of Prison Inspectors, Nov. 11th, 1844.

[Signed] HENRY LORD.

Argument of Counsel in support of the motion.

Mr. Treadwell, in support of the Motion, referred to the public laws of Rhode Island, pages 54, 57, to show that the Supreme Court is the highest court of law in that State, and produced a transcript of the Record of the Supreme Court of the State of Rhode Island, duly authenticated, to substantiate the first and second facts stated in the motion, to wit, that Thomas W. Dorr was indicted for treason against the State of Rhode Island, tried, convicted, and sentenced for life to hard labor in the State prison, and that a suspension of the sentence for one day only was allowed to prepare a bill of exceptions for a writ of error. To prove the third fact, to wit, that the Court refused to suspend the execution of the sentence, and await the decision of the case by the Supreme Court of the United States upon a writ of error. Burke's report, page 1047, was cited. The three affidavits given above were read, to prove the fourth and fifth facts, stated in the motion, to wit, that the inspectors of the prison and the Governor of the State refused to let said Dorr sign or see a petition for a writ of error, and other oppressive acts of the authorities of Rhode Island. The petition of sundry citizens of Providence, Rhode Island, was read, praying for a writ of error, or a writ of *habeas corpus*, to bring out said Dorr, and give him an opportunity to sign a petition for a writ of error.

This case, the counsel contended, was one in which jurisdiction in the appellate form clearly is vested in this court. Although it is a case between a State and one of its citizens, it is a case arising under the Constitution and laws of the United States, because they are involved in it. The third article of the Constitution was referred to, conferring upon this court limited original, but very extensive appellate jurisdiction, "with such exceptions, and under such regulations as the Congress shall make." This is not one of the excepted cases. On the contrary, it is one of the cases enumerated and provided for in the 25th section of the act of Congress of Sept. 24th, 1789; an act which prescribes the mode, and regulates the manner in which appellate jurisdiction shall be exercised by this court.

The judgment against Dorr in this case is a final judgment in a suit in the highest court of law in the State of Rhode Island, in which a decision could be had. The validity of the act of the State of Rhode Island relative to treason, under which Dorr was indicted, was drawn in question on account of its repugnance to the Constitution and laws of the United States, and the decision of the Supreme Court of Rhode Island was in favor of the validity of that act. The construction of the third section of the third article of the Constitution of the United States relative to treason, and that of the fourth section of the fourth article, relative to a republican form of government, were drawn in question; and in both cases the decision of the Supreme Court of Rhode Island was "against the title, right, privilege or exemption, specially set up or claimed" by the defendant under those clauses of the Constitution. [Under circumstances like these, the act provides that the judgment "may be re-examined and reversed,

or affirmed in the Supreme Court of the United States, upon a writ of error, the citation being signed by the "chief justice, or judge, or chancellor of the court rendering or passing the judgment or decree complained of, by a justice of the Supreme Court of the United States, in the same manner, and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision, as before provided, may, at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before mentioned questions of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities, in dispute."

This court is not deprived of its appellate jurisdiction because a State is a party to the suit. Although an individual cannot commence or prosecute a suit against a State, it does not follow that an individual may not defend himself against a suit commenced or prosecuted by a State, whether the action be of a civil or criminal character. A State, in the prosecution of suits against individuals, has no privilege to overleap the Constitution and laws of the United States. They are as binding upon the State, as upon individuals; as binding upon State courts, as upon courts of the United States. When, in the progress of the case of a State against an individual, a State court shall disregard the Constitution or laws of the United States or the rights of an individual under them, the individual has the right to make his exceptions, and put them upon the record, and then to call upon the court to send an authenticated transcript of such record to this tribunal for revision. A writ of error in such a case, it is contended, is a writ of right, which, upon due application, neither a State court, nor this court, can, with propriety, refuse to allow. This position is manifestly in accordance with the grant of appellate power in the third article of the Constitution, and with the judiciary act of 1789, before referred to.

In the well known case of *Cohens* v. *Virginia*,* this interpretation of the grant of appellate power to this court, was explicitly laid down by Mr. Chief Justice Marshall as the judgment of the court. This court is not divested of its appellate power by the character of the parties to the suit; by the circumstance that the plaintiff is a State. On the contrary, its appellate jurisdiction arises from the character of the case, as developed in the course of the suit. From the fact in the present case, that a defence set up under certain parts of the Constitution of the United States has been overruled, and an act of a State deemed by the defendant to be repugnant to the Constitution, has been held to be valid by the State Court. These questions of validity and construction appear distinctly upon the face of the record, and manifestly respect the questions of construction in dispute.

If a case of jurisdiction shall be made out, will this court have any discretionary power to pass it by, and decline the exercise of jurisdiction? No axiom would seem to be more evident, than that the court have no such election. No man could say that he had a right to appeal to a court of justice in any case, if it were optional with the court whether to hear the case or not. A right of appeal includes the right to be heard. In the case of *Cohens* v. *Virginia*, before referred to, the court treat this question as a self-evident truth, and in a manner equally satisfactory and instructive. They say, "But suppose a State to institute proceedings against an individual, which depended on the validity of an act emitting bills of credit: suppose a State to prosecute one

* 3 Story's Com. on Con., 578, 580.

of its citizens for refusing paper money, who should plead the Constitution in bar of such prosecution. If his plea should be overruled, and judgment rendered against him, his case would resemble this; and, unless the jurisdiction of this court might be exercised over it, the Constitution would be violated, and the injured party be unable to bring his case before that tribunal, to which the people of the United States have assigned all such cases. It is most true, that this court will not take jurisdiction, if it should not; but it is equally true, that it must take jurisdiction, if it should. The judiciary cannot, as the legislature may, avoid a measure, because it approaches the confines of the Constitution. We cannot pass it by, because it is doubtful. With whatever doubts, with whatever difficulties a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction, which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the Constitution and laws of the United States. We find no exception to this grant, and we cannot insert one."

"We think, then, that as the Constitution originally stood, the appellate jurisdiction of this court, in all cases arising under the Constitution, laws, or treaties of the United States, was not arrested by the circumstance that a State was a party."—3 *Story's Com. on Con.*, pp. 588, 589, 590.

The eleventh amendment of the Constitution provides, that, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the States by citizens of another State, or by citizens or subjects of any foreign state."

This amendment, sweeping as it is against the power of an individual to *commence* or *prosecute* a suit against a State, does not deprive an individual of his right of defence against a suit *commenced* or *prosecuted by* a State against himself. This right remains in all its length and breadth, unaffected by this amendment.

"If a suit, brought in one court, and carried by legal process to a supervising court, be a continuation of the same suit, then this suit is not commenced nor prosecuted against a State. It is clearly in its commencement, the suit of a State against an individual, which suit is transferred to this court, not for the purpose of asserting any claim against the State, but for the purpose of asserting a constitutional defence against a claim made by a State."—*Cohens* v. *Virginia*, 3 *Story's Com.*, 594.

"Under the judiciary act, the effect of a writ of error is simply to bring the record into court, and submit the judgment of the inferior tribunal to re-examination. It does not in any manner act upon the parties; it acts only on the record. It removes the record into the supervising tribunal. Where, then, a State obtains a judgment against an individual, and the court, rendering such judgment, overrules a defence set up under the Constitution or laws of the United States, the transfer of this record into the Supreme Court, for the sole purpose of inquiring whether the judgment violates the Constitution or laws of the United States, can, with no propriety, we think, be denominated a suit commenced or prosecuted against the State whose judgment is so far re-examined."—*Ib.*, pp. 595.

"The mode of removal is form and not substance. Whether it be by writ of error or appeal, no claim is asserted, no demand is made by the original defendant. He only asserts the constitutional right to have his defence examined

by that tribunal, whose province it is to construe the Constitution and laws of the Union.

"The only part of the proceeding, which is in any manner personal, is the citation. And what is the citation? It is simply notice to the opposite party, that the record is transferred into another Court, where he may appear, or decline to appear, as his judgment or inclination may determine. As the party who has obtained a judgment is out of Court, and may, therefore, not know that his cause is removed, common justice requires that notice of the fact should be given him. But this notice is not a suit, nor has it the effect of process. If the party does not choose to appear, he cannot be brought into Court, nor is his failure to appear considered as a default. Judgment cannot be given against him for his non-appearance; but the judgment is to be re-examined and reversed, or affirmed, in like manner, as if the party had appeared, and argued his cause.

"The point of view, in which this writ of error, with its citation, has been considered uniformly in the Courts of the Union, has been well illustrated by a reference to the course of this Court in suits instituted by the United States. The universally received opinion is, that no suit can be commenced or prosecuted against the United States; that the judiciary act does not authorize such suits. Yet writs of error, accompanied with citations, have uniformly issued for the removal of judgments in favor of the United States into a Superior Court, where they have, like those in favor of an individual, been re-examined, and affirmed, or reversed. It has never been suggested, that such writ of error was a suit against the United States, and, therefore, not within the jurisdiction of the appellate Court. It is, then, the opinion of the Court, that the defendant who removes a judgment, rendered against him by a State Court, into this Court, for the purpose of re-examining the question, whether that judgment be in violation of the Constitution and laws of the United States, does not commence or prosecute a suit against a State whatever may be its opinion, where the effect of the writ may be to restore the party to the possession of a thing which he demands."—*Ib.*, 596, 597.

The opinion of the Supreme Court in the case of *Martin* v. *Hunter*, 1 *Wheat. R.*, 304, abounds with instruction to the same effect, if it be not more pointedly applicable to the case under consideration. The whole case shows conclusively that the appellate jurisdiction of the Court extends to cases in the State Courts, as well as to those of the United States. A few passages will be cited.

"As, then, by the terms of the Constitution, the appellate jurisdiction is not limited, as to the Supreme Court, and as to this Court it may be exercised in all other cases, than those of which it has original cognizance, what is there to restrain its exercise over State tribunals in the enumerated cases?

"The appellate power is not limited by the terms of the third article to any particular Courts. The words are, 'the judicial power (which includes appellate power) shall extend *to all cases*,' &c., and 'in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction.' It is the *case* then, and not *the Court*, that gives the jurisdiction. If the judicial power extends to the case, it will be in vain to search in the letter of the Constitution for any qualification, as to the tribunal, where it depends."—3 *Story's Com.*, 599.

"If some of these cases might be entertained by State tribunals, and no appellate jurisdiction, as to them, should exist, then the appellate power would not extend to *all*, but to *some* cases."—*Ib.*, 599.

"But it is plain, that the framers of the Constitution did contemplate, that cases within the judicial cognizance of the United States not only might, but would arise in the State Courts in the exercise of their ordinary jurisdiction.

With this view, the sixth article declares, that 'this Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges, in every State, shall be bound thereby, anything, in the Constitution or laws of any State, to the contrary notwithstanding.' It is obvious that this obligation is imperative upon the State judges in their official, and not merely in their private capacities. From the very nature of their judicial duties, they would be called upon to pronounce the law, applicable to the case in judgment. They were not to decide, merely according to the laws, or Constitution of the State, but according to the Constitution, laws, and treaties of the United States,—'the supreme law of the land.'"—*Ib.*, 601.

"It has been argued, that such an appellate jurisdiction over State Courts is inconsistent with the genius of our governments, and the spirit of the Constitution. That the latter was never designed to act upon State sovereignties, but only upon the people; and that, if the power exists, it will materially impair the sovereignty of the States, and the independence of their Courts. We cannot yield to the force of this reasoning; it assumes principles which we cannot admit, and draws conclusions to which we do not yield our assent. —*Ib.*, 603.

"It is a mistake that the Constitution was not designed to operate upon States in their corporate capacities. It is crowded with provisions, which restrain or annul the sovereignty of the States, in some of the highest branches of their prerogatives.—*Ib.*, 603.

"The Courts of the United States can, without question, revise the proceedings of the executive and legislative authorities of the States, and, if they are found to be contrary to the Constitution, may declare them to be of no legal validity. Surely, the exercise of the same right over judicial tribunals is not a higher, or more dangerous act of sovereign power.—*Ib.*, 604.

"It is manifest, that the Constitution has proceeded upon a theory of its own, and given and withheld powers according to the judgment of the American people, by whom it was adopted. We can only construe its powers, and cannot inquire into the policy, or principles, which induced the grant of them. The Constitution has presumed (whether rightly or wrongly, we do not inquire), that *State attachments*, *State prejudices*, *State jealousies*, and *State interests*, might sometimes obstruct, or control, or be supposed to obstruct, or control, *the regular administration of justice.*—*Ib.*, 607.

"There is an additional consideration, which is entitled to great weight. The Constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes. It was not to be exercised exclusively for the benefit of parties, who might be plaintiffs, and would elect the national forum; but also for the protection of defendants, who might be entitled to try their rights, or assert their privileges, before the same forum. Yet, if the construction contended for be correct, it will follow, that, as the plaintiff may always elect the State Courts, the defendant may be deprived of all the security, which the Constitution intended in aid of his rights. Such a state of things can, in no respect, be considered as giving equal rights. To obviate this difficulty, we are referred to the power, which it is admitted, Congress possess, to remove suits from State Courts to the National Courts; and this forms the second ground upon which the argument we are considering has been attempted to be sustained.—*Ib.*, 607, 608.

"A writ of error is, indeed, but a process, which removes the record of one Court to the possession of another Court, and enables the latter to inspect the

proceedings, and give such judgment, as its own opinion of the law and justice of the case may warrant. There is nothing in the nature of the process which prohibits it from being applied by the Legislature to interlocutory, as well as final judgments. And if the right of removal from State Courts exist before judgment, because it is included in the appellate power, it must, for the same reason, exist after judgment.—*Ib.*, 609, 610.

"The remedy, too, of removal of suits would be utterly inadequate to the purposes of the Constitution, if it could act only on the parties, and not upon the State Courts. In respect to criminal prosecutions, the difficulty seems admitted to be insurmountable; and in respect to civil suits, there would, in many cases, be rights without corresponding remedies. If State Courts should deny the Constitutionality of the authority to remove suits from their cognizance, in what manner could they be compelled to relinquish the jurisdiction? In respect to criminal cases, there would at once be an end of all control; and the State decisions would be paramount to the Constitution. And though, in civil suits, the Courts of the United States might act upon the parties, yet the State Courts might act in the same way; and this conflict of jurisdictions would not only jeopard private rights, but bring into imminent peril the public interests. On the whole, the Court are of opinion, that the appellate power of the United States does extend to cases pending in the State Courts; and that the 25th section of the judiciary act, which authorizes the exercise of this jurisdiction in the specified cases, by a writ of error, is supported by the letter and spirit of the Constitution. We find no clause in that instrument, which limits this power; and we dare not interpose a limitation, where the people have not been disposed to create one."—*Ib.*, 610, 611.

The Court, in support of these strong positions, appeals to three historical facts, the latter of which, with a single remark of the Court, closes their decision of this immensely important case.

"It is an historical fact, that the Supreme Court of the United States have, from time to time, sustained this appellate jurisdiction, in a great variety of cases, brought from the tribunals of many of the most important States in the Union; and that no State tribunal has ever breathed a judicial doubt on the subject, or declined to obey the mandate of the Supreme Court, until the present occasion. This weight of contemporaneous exposition by all parties, this acquiescence of enlightened State Courts, and these judicial decisions of the Supreme Court, through so long a period, do, as we think, place the doctrine upon a foundation of authority, which cannot be shaken, without delivering over the subject to perpetual and irremediable doubts."—*Ib.*, 611, 612.

The character of the case of Mr. Dorr, as it stands upon the record here presented, appears to be as free from ambiguity, as are the Constitution, law, and judicial decisions to which such liberal reference has been made. The indictment charges Thomas W. Dorr with having committed the crime of treason against the State of Rhode Island; with certain acts of hostility against that State, in violation of a statute of its Legislature. The defence set up, asserts that the statute in question is repugnant to the Constitution of the United States; that the acts in question were not acts of hostility to the State, but on the contrary, were acts of duty to the State, done and performed by said Thomas W. Dorr as the Governor thereof, having been duly elected to that office by the people of the State acting under a valid Constitution and a Republican form of government; and that the acts of said Thomas W. Dorr, if they amounted to treason at all, were treason against the United States, and could not be inquired of in any State Court. The record proves that the whole defence was overruled by the Supreme Court of the State of Rhode Island. That Court held, that the crime of treason might be committed against the State, and that

the statute of the State in relation to treason was valid; and refused to permit the defendant to prove, or give evidence tending to prove, the validity of the Constitution under which he claimed to have acted.

Here, it is contended, is a direct issue on constitutional grounds. The court has overruled one ground of defence, and refused to receive evidence in support of another. The jury, under the charge of the court, have found a verdict of guilty, and the court have sentenced the defendant to confinement for life in the State Prison. The defendant, sensible that injustice had been done him by the court, in overruling his defence, employed all the means in his power to command, to prepare his case for revision by this tribunal. Of this fact, the record exhibits conclusive evidence. Why then, it may be asked, does he not, under his own hand, petition this court for a writ of error, to bring before it the record of his trial and sentence? The affidavits which have been read give the reply. He is not permitted to sign or see a petition. He has signified his desire to bring his case before this court, in the only way or manner left open to him, by placing his intentions upon the record. He seems to have anticipated a surprise, and it has been sprung upon him, for he was hurried to the State Prison without allowing him time to have his application for a writ of error prepared, or even to consult with his counsel upon the subject. Harsh and anomalous as this act was, it appears to have been but the prelude to a series of oppressive measures, all conspiring to deprive the defendant of his right to a revision of his defence by this court.

By a law of the State (*p.* 414, *Pub. Laws R. I.*), the control of the State Prison is vested in a board of seven inspectors, appointed annually by the Legislature. The act comprises thirty-five sections which, generally, are so many rules and regulations for the government of the prison. One section authorizes the inspectors to make rules and regulations, "*provided the same are not inconsistent with law.*" Many of the rules are humane. They require that one of the inspectors "SHALL, *at least once in every week, visit each prisoner*, and in the absence of the warden and under-keepers, examine into his situation, *hear any complaints that he may make*, and see that the rules and regulations of the prison be strictly observed; they shall keep a particular record of all their meetings and proceedings, of their weekly visits, and complaints made to them *by prisoners*, whether well or ill-founded. The inspectors may provide for the comfort of the prisoners, by admitting such communication to and from their friends and among themselves, and such books and other articles as they may deem expedient." The inspectors shall appoint the warden, who shall appoint under-keepers, keep a journal, in which, among other things, he shall enter "all complaints that are made to him by the convicts;" all punishments, and the visits of the inspectors and physicians, and "see that the rules of the prison are strictly obeyed."

"Sec. 28. The governor and lieutenant governor of the State, the speaker of the House of Representatives, the secretary of State, the attorney general, and the justices of the Supreme Court shall, *ex-officio*, be *official visitors* of the prison."

"Sec. 29. No person *not* an *official* visitor, shall be allowed to visit the prison, without a written permit from one of the inspectors; nor shall any person other than an official visitor have any conversation or communication with any convict, except as provided for in the general rules established for the prison. This rule may be dispensed with in favor of any person visiting the prison from without the State, for the purposes of general information, by a written permit from two inspectors."

"Sec. 35. All breaches of this act shall be punished by indictment."

The Court will perceive that there is nothing in these prison rules to prevent a man from seeing his counsel, and petitioning for a writ of error. This is his

right, *in* prison, or *out* of prison. This is the law of the land, and, if that would make the case any stronger, the laws of the land are recognized by these prison laws. The inspectors are authorized to make rules—*provided the same are not inconsistent with law.* The prisoners, although by a *fiction* of law, not a reality, called civilly dead, still have rights. They have the right to complain, and the officers of the prison are bound to make record of these complaints, and redress such as may be well founded. Nor are these the only means of protecting the prisoners from oppression, provided by the laws of Rhode Island. The executive, and certain other officers of the State, including the justices of the Supreme Court, are, *ex-officio*, official visitors of the prison. They can go in and out freely, without let or hindrance. They can read the record of the inspectors, and the journal of the wardens, and communicate freely with the prisoners, and it is their duty so to do, and see that the officers of the prison perform *their* duty. That the prisoners be not oppressed; that "*cruel* and *unusual punishments*" be not inflicted; that the laws of the land be duly executed there, in the prison, as well as in other parts of the State. For this the official visitors were appointed. How have the *inspectors* and *official* visitors performed *their* respective duties? Let the evidence in this case, the affidavits that have been read, answer.

No sooner is Dorr, in hot haste, hurried to prison, than these mild and humane rules, these laws of the State, manifestly referring to the supreme law of the land, as the basis upon which they are to rest, are superseded by a new code, *put in practice* by the prison inspectors, if not in solemn form enacted by them, and put upon their records. In violation of these laws, the inspectors of the prison say that Dorr shall not see father, mother, brother, or sister, nor even counsel, and the stern edict is sternly enforced. After a month of delay, the former counsel of Dorr made a formal application for liberty to consult with him, in the prison, in reference to an appeal to this tribunal by a writ of error. This was refused by the inspectors. The latter proposed a reference to the judges of the Supreme Court of the State, and to the Legislature. Irregular as this procedure was, it was resorted to, and proved ineffectual. All access to their client having been denied them, Messrs. Burgess and Turner, for themselves and Mr. Atwell, abandoned the cause, and declared, that as they were forbidden to consult with him they would take no further measures or means to carry up the case by writ of error.

In this extremity, the neighbors of the prisoner, prompted by feelings of humanity, interposed, by employing General Fessenden and myself to render our aid in bringing the case, by writ of error, before this Court for revision; in the confident expectation, that, under the circumstances, the peculiar hardships of this case, such interposition will be looked upon with favor, and allowed by this tribunal. The affidavits prove, that by virtue of this employment, we applied to the inspectors of the prison for liberty to see the prisoner upon the subject, and that this request was, after taking time for consideration, refused. That we then presented a petition to Thomas M Burgess, Esq., mayor of Providence, who is the chairman of the board of inspectors, with a request that he would permit said Dorr to read and sign it, if he should think proper to do so. The reply of Mr. Burgess to this plain and reasonable request, exhibits not merely his own decision, but the long foregone determination of the authorities of Rhode Island. He speaks for himself, and he speaks for his fellows. He knows their mind and will, upon the subject, for he has consulted with them; and they already agree with him, that Dorr should never *sign* or *see* such a petition! That it was the determination of the *authorities* of the *State*, that said Dorr should have *no opportunity* to carry up his case by writ of error, and they did not intend that there should be *any interference* on *behalf* of *said Dorr* for

that end! This bold attack upon the rights of a prisoner in their power, sufficiently indicates the kind of law and order which prevails in Rhode Island. The authorities of that State are not ignorant of the right of Dorr to come before this tribunal for a revision of his case. They know it full well. They tacitly admit that they know the fact, by combining to deprive him of the benefit of it.

After much persuasion, the chairman of the board of inspectors consented to *show* the petition to the other members, and *consult* with them. But, as he declared beforehand, so the fact turned out. He *knew* that they, as well as himself, were resolved that Dorr should neither sign nor see the petition. The letter of this officer which accompanies the return of the papers, and which makes a part of the evidence in support of this motion, after stating, that the other members of the board had been consulted, and now as before, agreed with him in taking no action upon the request, adds as the reason, "because it is so very similar in its character to one which the general assembly, at their October session, virtually refused to grant."

Another branch of the government, the executive, it appears by the affidavit of Col. Eddy, was applied to, to permit the prisoner to see and sign the petition. As the Governor was an official visitor, it was supposed there could be no impropriety in his taking the petition to the prisoner, for perusal and signature. The law of the State upon the subject was supposed by distinguished civilians to authorize the Governor to do this; but that officer took a different view of his power under that law, and as he alleged, for want of power, refused to present the petition to the prisoner or permit any one else to do so.

Without questioning the sincerity of the Governor in the view which he expresses of his want of power, it may be remarked as a singular fact, that no branch of the Government of Rhode Island could be induced to make the slightest effort to promote the desire of the prisoner to obtain a writ of error. The inspectors declare that the authorities of the State have resolved that Dorr shall have no opportunity thus to carry up his case, and nothing appears to discredit their assertion. What a spectacle! The whole power of the State placed in the hands of a horde of prison inspectors, and brought to bear upon a single individual, who is claimed to be civilly dead! And for what? To keep him out of this Court! Such a determination indicates anything but confidence in a cause which requires such means to sustain it. Dorr relies upon his innocence, and upon his ability to show, that in order to procure a verdict against him, the Constitution has been violated. The authorities of Rhode Island rely, not upon Dorr's supposed guilt, nor upon a consciousness that in his trial they have not violated the Constitution; but upon the *vigilance* of their board of *prison inspectors* to keep from his sight a petition! They seem to rely, too, on the supposed power of their prison inspectors to persuade Dorr to petition, not to this Court to allow him to establish his innocence, if he can do so, but to them for a pardon! They say that if he will ask for a pardon, he shall have it promptly. The chairman of the board of inspectors says he told him so! What was Dorr's reply? We have not heard it yet; but if this Court shall issue its process to bring him here, they may hear it from his own lips, probably in the words of our revolutionary fathers in reply to a similar proposal from the minions of George III.: "We have committed no offence, and want no pardon!"

The authorities of Rhode Island seem to be under a delusion, that there is no safety for themselves until Dorr shall confess that he is guilty of a crime of which he asserts his innocence, and sue for pardon. He is ready to prove his innocence before this Court, or failing to do it, to suffer the consequences. This will not answer the purposes of the authorities aforesaid. Indeed, it seems to be what they most dread. A delusion not entirely unlike this, per-

vaded several towns in Massachusetts at the time of the Salem witchcraft. Some of the most quiet, harmless, and innocent persons in that vicinity, were indicted for the alleged crime of witchcraft—a crime which had no existence but in the minds of the accusers, and the authorities before whom the accused were arraigned. The delusion was so general, that to be accused was almost certain to ensure conviction. To defend, was worse than useless. Confession of guilt, or death under the gallows, were the alternatives. The friends of the accused joined with the *authorities* in imploring the accused to confess guilt. "But we are innocent," said the accused. "No matter," was the reply; "you have no other way to escape death! Death on the gallows!!"

In this awful predicament, some of the accused made confession of guilt, and thus saved their lives. Margaret Jacobs made such a confession, and was pardoned, or entitled to pardon. But Margaret Jacobs was a conscientious woman, and was seized with horror on reflecting that she had confessed to a lie. She sent for a friend, who drew up for her a retraction of her confession, which she signed as it were in the face of *death* and the *authorities*, and died under the gallows, rejoicing in her innocence, and that she had, by her retraction, escaped the lying snare of the authorities. Margaret Jacobs suffered, but not for crime. The alleged crime of witchcraft was wiped away by confession; but she suffered for the truth, for asserting her innocence!

At length one of the accused commenced a suit against his accusers for defamation, which did much to arrest the delusion. The authorities, their counsellors and prompters, were made sensible of the crimes they had all committed, in combining to accuse, condemn, and execute, innocent persons. They did what they could to mitigate the sufferings of some of the living victims, but they could not re-animate Margaret Jacobs, and other tenants of the grave on "Gallows Hill."

The authorities of Rhode Island seem disposed to treat Dorr as Paul was sometimes treated by the Roman Courts. That great Apostle of the Gentiles was a lawyer of no inconsiderable attainments in the science of the civil law. He well knew the Roman law; and when falsely accused by his Jewish or Roman brethren, appealed to its provisions, to protect him from mock trials, as well as from punishment without trial. This Apostle had an exalted opinion of "due process of law" before punishment. The Supreme Court, the Court of the highest appellate jurisdiction in Paul's time, was held by Cæsar. Falsely charged with sedition, and other crimes, perhaps treason, and finding that his enemies had conspired against his life; bandied about by the Roman Judges, and in danger of being sent to Jerusalem to be sacrificed, the Apostle asserted his right of appeal. "I appeal," said he "to Cæsar:" and the Court of Festus, after due conference upon the matter, allowed the writ of error. "Hast thou appealed unto Cæsar? unto Cæsar shalt thou go," said the Court: and they sent the illustrious prisoner, through perils of storm and shipwreck, up to the Supreme Court, to the judgment-seat of Cæsar, for the establishment of his innocence.

In this last particular, the authorities of Rhode Island have departed widely from the precedent of the Roman Court. When Dorr asserts his innocence, and appeals to Cæsar, to the Supreme Court of this country for an opportunity to establish it, the authorities of Rhode Island combine together, and tell him, unto Cæsar shalt thou *not* go! You may confess yourself guilty of a crime of which you say you are innocent, and ask *our* pardon; but you shall not go to the Supreme Court of the United States for justification! You shall not go to Washington with your case at all, but you shall go to the State prison and paint fans for life, or ask our pardon! Such is the practical language of the barbarous authorities of Rhode Island, to an American citizen who, it is believed, this

Court will say, has a right to send up his defence for revision. If such men do not out-Herod the Herods of Galilee, they out-Algerine the Algerines of Barbary! This contempt of the supreme law, and of the rights of American citizens, on the part of the authorities of Rhode Island, brings to mind another incident in the life of St. Paul. In company with Silas, Paul encountered the witchcraft or divination of a fortune-teller, and cast out the evil spirit. In revenge for the lost hope of their gains, the members of the craft dragged Paul and Silas before the magistrates, who stripped off their clothes, and ordered them to be lynched until, perhaps, the blood ran down to their heels. Cast into prison, under a strict charge to the jailor, that officer put in force the new and severe rules and regulations of the authorities. An earthquake suddenly interposed and shook every stone in the foundation of the prison, and set the prisoners at liberty to escape, but they would not flee. The warden was alarmed, and the magistrates too, but not like the warden, to contrition. The magistrates sent their officers to the warden, with orders to *let* Paul and Silas go, and the warden delivered the message with an exhortation to peace. Now let us hear the law from the illustrious prisoner, the Christian, as well as the Jewish and the Roman lawyer. "They have beaten us openly, uncondemned, being Romans"—with the rights of Romans, to a trial, aye, and a revision of defence, too, before punishment—"and have cast us into prison; and now do *they* think to thrust us out privily? nay, VERILY; but let them come themselves, and fetch us out." And he made them do it. He made them come down to the prison, shattered as it was, and attend to their own jail delivery. Paul knew the law, and he compelled the magistrates, the courts without even *original* jurisdiction in the case, ultimately to submit to its supremacy, and certify him free. Instead of praying to *such courts* for *pardon*, Paul soon taught them to pray to him and Silas for impunity for such outrageous acts of violence, perpetrated in the consecrated sanctuary of justice.

An interposition of that character is not now to be expected. Nor is it needful. Let but the process of this court go forth, to bring up either Dorr or his case, and if the authorities of Rhode Island do not tremble as did the magistrates who lynched Paul, the former may have as good an opportunity to certify Dorr free from the crime of treason, as the latter had to release Paul. At any rate, Dorr thinks he has a right to come here for a revision; and until he does come here, or learns from this Court that he cannot come, he will never ask for pardon. If this Court should revise his defence, and say that he had committed treason, the decision would doubtless have its due weight with him, and with the great body of the people who deem him innocent, and will so deem him, until this Court shall decide against him. In that event, although conscious of nothing but pure and laudable intentions in the course he has pursued, he might perhaps be justified in asking for a pardon. If he could not do that, he would submit to his punishment with dignified composure.

That this case is clearly embraced by the appellate jurisdiction of this Court, will probably not be denied. Still it may not be amiss to refer the Court to one other case; that of *Crowell* v. *Randall*, *10th Peters' R.*, 392, 398, in which, after reference to many cases, the Court consider the rule as too firmly settled to be shaken. The writ of error in that case was disallowed because the record did not exhibit a case of jurisdiction. Admitting this Court to have jurisdiction in this case, it is important to inquire whether either the executive, legislative, or judicial power of any State, or the three branches of a State government combined, can, by any means, deprive this Court of such jurisdiction. That the disposition to do so has existed, appears by the case of *Martin* v. *Hunter*, as well as by the case of Dorr. But the question, though important, seems to be well settled. So far as power is clearly given by the Constitution to this Court,

or to either branch of the general government, it is supreme and controlling over the State authorities: all of which are under the strongest obligations which human authority can impose, to support the "supreme law of the land." The cases of *McCulloch* v. *Maryland*, 4 *Wheat.*, 316, and *Weston* v. *The City Council of Charleston*, 2 *Peters' R.*, 449, must be considered as settling the general doctrine, "that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the Constitutional laws enacted by Congress, to carry into execution the powers vested in the general government."—2 *Story's Com. on Con.*, 495. And further, "that the powers of a State cannot, rightfully, be so exercised, as to impede and obstruct the free course of those measures, which the government of the United States may rightfully adopt."—*Ib.*, 497. The Courts of the United States have exclusive authority over their own judgments and proceedings.—*Ib. iii.* 625. *McKim* v. *Voorhis*, 7 *Cranch R.*, 279. "Nor can any State Court, or any State Legislature, annul the judgments of the Courts of the United States, or destroy the rights acquired under them.—*United States* v. *Peters*, 5 *Cranch*, 115—nor in *any manner* deprive the Supreme Court of its appellate jurisdiction —*Wilson* v. *Mason*, 1 *Cranch*, 94—nor in any manner interfere with, or control the process (whether mesne or final) of the Courts of the United States—*United States* v. *Wilson*, 8 *Wheaton R.*, 253—nor prescribe the rules or forms of proceeding, nor effect of process, in the Courts of the United States—*Wayman* v. *Southard*, 10 *Wheaton R.*, 1, 21, 22—nor issue a *mandamus* to an officer of the United States, to compel him to perform duties, devolved on him by the laws of the United States."—*McClung* v. *Silliman*, 6 *Wheaton R.*, 598; 3 *Story's Com. on Con.*, 625. Many other judicial decisions to the same effect might be cited, but the position is deemed too strong to need their support. Taking for granted, then, that this Court have appellate jurisdiction over this case, the question presents itself, in what way shall it be exercised? By allowing the writ of error upon the petition of the friends of the prisoner, or by issuing a writ of *habeas corpus*, to bring him before the Court? It is contended that the Court have full power to do either. The former mode is plainly prescribed by the judiciary act of 1789. The latter mode, it is maintained, is also prescribed by the same act, although, it may be admitted, some degree of ambiguity may appear in the provisions of that act, in this, and some other important particulars.

The object of this part of the act of 1789 was, to carry out, into practical operation, two important provisions of the Constitution; the one relative to the appellate jurisdiction of this court, and the other to the great privilege or right, of the writ of *habeas corpus*. The provisions are remedial, and must be construed in favor of and not against, the remedy. The jurisdiction having been given, the duty was imperative to provide the means necessary to its exercise; if, indeed, the power of the court to issue the writ in such a case as this, is not, necessarily, incident to these two constitutional provisions.

The 14th section of that act, in providing, "that the courts of the United States shall have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which *may be necessary for the exercise of their respective jurisdictions*, and agreeable to the principles and usages of law," was, beyond question, intended, *to the full extent of its terms*, to apply to these two provisions. The sentence gives ample power, and it gives no more. The reason or object of the power is given—the exercise of jurisdiction, and the writs must be issued according to law. The power is manifestly within the scope and objects of the Constitution, and no necessity existed for a further proviso to restrict it.

The next sentence gives power to the *separate justices* of the courts to issue

writs of *habeas corpus*, not for the *necessary exercise of jurisdiction*, but for the purpose of *inquiry into the cause of commitment;* and to this sentence is annexed a proviso, which, it is maintained, cannot be so applied to the former sentence, if applied to it in any degree, as to deprive this court of the power of exercising a clear case of appellate jurisdiction. Such a construction, it is apprehended, would not only eviscerate this clause of a remedial statute, but would strike at the Constitution; and in all cases like the one now under consideration, would operate as a perpetual suspension of the "privilege of the writ of *habeas corpus*." So favorably has this provision of the Constitution been interpreted by the State judges, that *they* have issued writs of *habeas corpus*, "*in cases where the party has been in custody under the authority of process of the courts of the United States.*"—3 *Story's Com. on Con.*, 625. It would be a singular anomaly in our system of government, to allow the inferior power to issue the writ of *habeas corpus* and take a person from the custody of the superior power; and deny to the superior power the right to issue the writ, when it should be necessary to the exercise of a case of acknowledged jurisdiction, because the party might be in *custody of the inferior power*. And shall the inferior power incarcerate a man who has a right to come before this tribunal for a revision of his defence, and say that he shall have no opportunity to come up hither? Shall the State of Rhode Island be sustained in such a course, or shall she be made to bow in submission to the "supreme law of the land," as uniformly interpreted by this court. The great States of New York, Pennsylvania, Virginia, Ohio and Maryland have promptly submitted to the decisions of this court. So must the small State of Rhode Island submit, if she shall be found, as other States have been found, to have passed acts repugnant to the Constitution of the United States.

A case like this of Dorr's has never before occurred. It will be in vain, therefore, to seek for precedents entirely applicable to it. The case, *Ex parte* Bollman (4 *Cranch R.*, 75), may be referred to, as sustaining the general principle, that the power of Courts, and of this Court, to issue writs of *habeas corpus*, for the exercise of their respective jurisdictions, is a constitutional power, and is given to this Court by the judiciary act of 1789. The Court in that case granted the writ of *habeas corpus*, because it had appellate jurisdiction. In the case, *Ex parte* Kearney (*7th Wheaton's R.*, 38), the Court *refused* to grant the writ, because it had *no* jurisdiction in the case. The power of this Court to issue the writ is, it is confidently contended, co-extensive with its appellate jurisdiction.

The friends of the prisoner who have petitioned for the interposition of this Court in the case, have, in common with the great body of the people whose attention has been drawn to the subject, taken a deep interest in having the case deliberately revised by this Court. Coming as its members do, from various and distant States, and removed by their official stations, as well as by habit and age, from exciting party contests, the solemn judgment of this tribunal in this, as it has in other exciting cases, would doubtless allay every improper feeling, and be cheerfully, nay, joyfully acquiesced in by the whole country. If the Court shall now decide to issue the writ of *habeas corpus*, and bring the prisoner to this place, his friends, who have long sympathized with his sufferings, will be enabled to mingle with unwonted zest in the scenes of gladness and joy which the approaching holidays will witness. The act, it is maintained, is due to the case; and the time, it is submitted, would be exceedingly appropriate for the performance of it.

MR. JUSTICE McLEAN DELIVERED THE OPINION OF THE COURT OVERRULING THE MOTION.

Ex parte: Application of Thomas W. Dorr for a writ of *habeas corpus.*

Thomas W. Dorr was convicted before the Supreme Court of Rhode Island, at March term, 1844, of treason against the State of Rhode Island, and sentenced to the State's prison for life. And it appears from the affidavits of Francis C. Treadwell, a counsellor at law of this court, and others, that personal access to Dorr, in his confinement, to ascertain whether he desires a writ of error to remove the record of his conviction to this court, has been refused. On this ground the above application has been made.

Have the court power to issue a writ of *habeas corpus* in this case? This is a preliminary question, and must be first considered.

The original jurisdiction of this court is limited by the Constitution to cases affecting ambassadors, other public ministers and consuls, and where a State is a party. Its appellate jurisdiction is regulated by acts of Congress. Under the common law, it can exercise no jurisdiction.

As this case cannot be brought under the head of original jurisdiction, if sustainable, it must be under the appellate power.

The 14th section of the judiciary act of 1789 provides, "That the courts of the United States shall have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the Supreme Court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment: provided that writs of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

In the trial of Dorr, it was insisted that the law of the State, under which he was prosecuted, was repugnant to the Constitution of the United States. And on this ground a writ of error is desired under the twenty-fifth section of the judiciary act above named. That as the prayer for this writ can only be made by Dorr, or by some one under his authority, and as access to him in prison is denied, it is insisted that the writ to bring him before the court is the only means through which this court can exercise jurisdiction in his case by a writ of error.

Even if this were admitted, yet the question recurs, whether this court has power to issue the writ to bring him before it. That it has no such power under the common law, is clear. And it is equally clear that the power nowhere exists, unless it be found in the fourteenth section above cited.

The power given to the courts in this section to issue writs of *scire facias*, habeas corpus, &c., as regards the writ of *habeas corpus* is restricted by the proviso to cases where a prisoner is "is in custody under or by color of the authority of the United States, or has been committed for trial before some court of the same, or is necessary to be brought into court to testify." This is so clear, from the language of the section, that any illustration of it would seem to be unnecessary. The words of the proviso are unambiguous. They admit of but one construction; and that they qualify and restrict the preceding provisions of the section, is indisputable.

Neither this, nor any other court of the United States, or judge thereof, can issue a *habeas corpus* to bring up a prisoner who is in custody under a sentence or execution of a State court, for any other purpose than to be used as a wit-

ness. And it is immaterial whether the imprisonment be under civil or criminal process. *As the law now stands, an individual who may be indicted in a circuit court, for treason against the United States, is beyond the power of federal courts and judges, if he be in custody under the authority of a State.*

Dorr is in confinement under the sentence of the Supreme Court of Rhode Island—consequently this court has no power to issue a *habeas corpus* to bring him before it. His presence here is not required as a witness, but to signify to the court whether he desires a writ of error to bring before this tribunal the record of his conviction.

The counsel in this application prays for a writ of error; but, as it appears from his own admission that he does not act under the authority of Dorr, but at the request of his friends, the prayer cannot be granted. In this view, it is unnecessary to decide whether the counsel has stated a case which, with the authority of his client, entitles him to a writ of error.

The motion for a *habeas corpus* is overruled.

Ex parte: In the matter of Thomas Wilson Dorr, on petition for a writ of *habeas corpus*, or for a writ of error to the Supreme Court of the State of Rhode Island:

On consideration of the motion made by Mr. Treadwell, of counsel for the petitioner, on a prior day of the present term of this court, to wit: on Wednesday, the 11th instant, and of the argument of counsel in support of the motion thereupon had, it is now here ordered and adjudged by this court that the said motion be, and the same is hereby, overruled.

By Mr. Justice McLean.

27th December, 1844.